

Fischbach/Lord Electric Company and Jack L. Marsh

International Brotherhood of Electrical Workers, Local Union 112, AFL-CIO and Michael S. June and Robert Albert Knapp and Thomas E. McKenzie and Jack L. Marsh and Jimmy M. Scott. Cases 19-CA-15220, 19-CB-4486, 19-CB-4496, 19-CB-4501, 19-CB-4636, and 19-CB-4650

23 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 12 October 1983 Administrative Law Judge Burton Litvack issued the attached decision. Each Respondent filed exceptions¹ and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent Employer filed a brief in response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law

¹ The General Counsel has moved to strike Respondents' exceptions to the judge's failure to direct the General Counsel to release certain documents in its possession. In light of our disposition of the case we find it unnecessary to pass on the motion.

² The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We note that in the heading to sec. IV.A of his decision, the judge mislabeled Case 19-CB-4650 as Case 19-CA-4650, and that in the heading to sec. IV.B, he mislabeled Case 19-CB-4636 as Case 19-CB-4650. We also note that the judge misspelled the name of Respondent Employer in the caption, which we correct. These errors do not affect our decision.

³ The judge declined to order that Respondent Union provide travelers Robert Knapp and Thomas McKenzie wages lost because of its discriminatory refusal to dispatch them to jobs. He did so because in his view these applicants' failure to possess electrician licenses during their periods of nonreferral would have made their employment as electricians unlawful under state law. However, we adopt the judge's findings that the Union did refer Knapp and McKenzie at other times with knowledge that they did not possess licenses and that the Union's "understanding" with employers that it would refer only licensed electricians was vague and not credible. We agree with the judge that the license requirement was not a factor in the bypassing of Knapp and McKenzie. Therefore, we shall modify the judge's recommended Order to require Respondent Union to make Knapp and McKenzie whole for any losses caused by its discrimination.

judge as modified below and orders that Respondent International Brotherhood of Electrical Workers, Local Union 112, AFL-CIO, its officers, agents, and representatives, and Respondent Fischbach/Lord Electric Company, its officers, agents, successors, and assigns, shall respectively take the action set forth in the Order as modified.

1. Substitute the following for paragraph A,2(b).

"(b) In the manner set forth in the 'Remedy' section herein make whole Robert Knapp, Thomas McKenzie, Michael June, and Jimmy Scott for any loss of pay any of them may have suffered by reason of our failure to dispatch them to available jobs."

2. Substitute the attached notice marked "Appendix A" for that of the administrative law judge.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to refer applicants who are not members of this labor organization for employment with employer-members of the National Electrical Contractors Association.

WE WILL NOT cause Fischbach/Lord Electric Company to discharge or otherwise discriminate against employees in any way because they are not members of this labor organization.

WE WILL NOT deny referral applicants the opportunity to review and inspect our hiring hall dispatch records.

WE WILL NOT engage in efforts to cause non-member employees of Fischbach/Lord Electric Company or nonmember hiring hall applicants to accept reductions in force or to forgo dispatch opportunities in order to provide jobs for members of this labor organization.

WE WILL NOT remind individuals who are not members of this labor organization that it is the IBEW tradition that they should forgo work opportunities or leave present jobs in order to provide work for members of this labor organization who are unemployed.

WE WILL NOT threaten to retaliate or, in any other manner, punish individuals who are not members of this labor organization if they do not forgo dispatch opportunities or leave present jobs in order to provide work for members of this labor organization who are unemployed.

WE WILL NOT in like or related manner restrain or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, jointly and severally with Fischbach/Lord Electric Company, make Arthur Filardi, Ruben Nostebon, Charles Serra, Donald Dittman, James Davis, John Oestreich, Dean Ericson, Joseph Wray, Robert Mann, Pil Yun Chong, Delbert Jennings, Kenneth Yost, Jimmie Andrews, George Anderson, Harold Albert, Richard Adler, Thomas Bauman, R. Payone, John Haid, Wayne Crosby, Barry Engleman, Howard Shinn, Gerald P. Stover, Thomas J. Hanley, James Mercure, Gary Truger, Paul Freed, James Parks, Joseph Sanderson, Paul Woytowich, G.W. Drappo, Earl Shiftlet, Herbert Johnson, Charles Gilles, Lawrence Smith, James Smith, James Mullenax, Bill Crabtree, and Michael Kelly whole for any loss of pay any of them may have suffered by reason of the discrimination against them, with interest.

WE WILL inform Fischbach/Lord Electric Company, in writing, that we have no objection to the reemployment of the above individuals.

WE WILL make whole Robert Knapp, Thomas McKenzie, Michael June, and Jimmy Scott for any loss of pay they may have suffered, with interest, by reason of our failure to dispatch them to available jobs.

WE WILL notify, in writing, Michael June, Jimmy Scott, Robert Knapp, and Thomas McKenzie as to the steps we have taken to ensure that hiring hall procedures will be available to them for use on an equal basis with our members.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNION 112, AFL-CIO

DECISION

BURTON LITVACK, Administrative Law Judge. On December 28, 1982,¹ the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a third consolidated complaint in Cases 19-CB-4486, 19-CB-4496, 19-CB-4501, 19-CB-4636, and 19-CB-4650, based, respectively, on a charge filed by Michael S. June on May 19, 1982, a charge filed by Robert A. Knapp on June 1, 1982, a charge filed by Thomas E. McKenzie on June 3, 1982, and original and first amended charges filed by Jack L. Marsh on October 28 and December 2, 1982, respectively, and a charge filed by Jimmy M. Scott on November 10, 1982, alleging that International Brotherhood of Electrical Workers, Local Union 112, AFL-CIO (Respondent Union) engaged in acts and conduct violative of Section 8(b)(2) and (1)(A) of the National Labor Relations Act (the Act) and a complaint in Case 19-CA-

15220,² based on a charge filed by Marsh on December 2, 1982, alleging that Fishbach/Lord Electric Company (Respondent Employer) engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act. Both Respondent Union and Respondent Employer filed answers, denying the commission of any unfair labor practices. All the above-captioned matters, having been consolidated for hearing by the aforesaid Regional Director, were heard by me on February 15, 16, and 17 and April 19, 20, and 21, 1983, in Richland, Washington. At the hearing all parties were afforded a full opportunity to examine and cross-examine witnesses, to offer any relevant evidence, to argue their positions orally,³ and to file posthearing briefs. Accordingly, on the record as a whole, on my observation of the testimonial demeanor of the witnesses, and on analysis of the posthearing briefs, which have been carefully considered, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Western Division, Inland Empire Chapter, National Electrical Contractors Association, Inc. (NECA) is an organization composed of employers engaged in electrical contracting and which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements. Respondent Employer, and employer-member of NECA, is a joint venture between Fishbach and Moore, Inc. and

² Along with the posthearing brief, the General Counsel submitted a motion to amend pars. 5(c) and 7 of the complaint in Case 19-CA-15220. Said amendments have the effect of adding an alleged discriminatee, Mike Kelly, and an additional theory of liability on the part of Respondent Employer. Noting, with respect to Kelly, that the Regional Director for Region 19 had previously, on February 3, 1983, amended the above complaint to name Kelly as an alleged discriminatee and that the matter of Respondent's alleged unlawful motivation was extensively litigated at the hearing, I shall grant the General Counsel's motion.

³ At the hearing, both Respondent Union and Respondent Employer submitted motions that I approve their respective settlement offers in the above-captioned matters. It was recognized by all sides that, if found to be meritorious, one of the remedies for the allegations of both complaints involves backpay and that the amount of such would potentially total \$1.3 million in Cases 19-CA-15220 and 19-CB-4636, with the liability of both Respondents joint and several. There was no estimate of Respondent Union's potential liability in Cases 19-CB-4486, 19-CB-4496, 19-CB-4501, and 19-CB-4650. In settlement of the potential backpay liability in all the cases, Respondent Union and Respondent Employer offered to pay the sum of \$250,000—\$200,000 payable by Respondent Employer and \$50,000 by Respondent Union. In addition, Respondent Employer offered an additional \$100,000 if a finding of liability is made against the Respondent Union, if the latter is unable to pay the entire judgment assessed against it, and if any amount paid by the Respondent Union is applied against the \$100,000 offer. The General Counsel argued against approval of the above offers as such are "inadequate" to remedy the violations. Analysis discloses that the settlement amounts offered total less than 25 percent of the potential joint and several liability of Respondents herein. Moreover, even taking into account the affidavits of alleged discriminatees, wherein they waive interest in any backpay herein, the combined offers total less than 50 percent of potential liability. Without regard for the merits of the complaint allegations herein and bearing in mind the admonition of the Board that a settlement should not be approved unless it substantially remedies the alleged unfair labor practice allegations, I have decided to reject the offers of settlement by the Respondents. I do so as I believe that said offers would not sufficiently remedy the allegations of the instant complaints if found meritorious.

¹ Unless otherwise stated, all dates herein occurred in 1982.

Lord Electric Company, each a state of Delaware corporation, with an office and place of business in Richland, Washington, where it is engaged in the business of installing electrical systems at the Hanford Nuclear site. During the 12-month period immediately preceding the issuance of the complaints herein, which period is representative, Respondent Employer, in the course and conduct of its business operations described above, had gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from sources outside the State of Washington. Respondent Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Respondent Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

1. From about April 21 until about May 17, did Respondent Union fail and refuse to refer June to employment with members of NECA because he was a "traveler" and not a member of Respondent Union, in violation of Section 8(b)(2) and (1)(A) of the Act?

2. From about April 22 until about May 15, did Respondent Union fail and refuse to refer Knapp to employment with members of NECA because he was a "traveler" and not a member of Respondent Union, in violation of Section 8(b)(2) and (1)(A) of the Act?

3. From about April 19 until about May 20, did Respondent Union fail and refuse to refer McKenzie to employment with members of NECA because he was a "traveler" and not a member of Respondent Union, in violation of Section 8(b)(2) and (1)(A) of the Act?

4. From about May 7 until about October 1, did Respondent Union fail and refuse to refer Scott to employment with members of NECA because he was a "traveler" and not a member of Respondent Union, in violation of Section 8(b)(2) and (1)(A) of the Act?

5. About June, did Respondent Union cause Respondent Employer to discriminatorily terminate "travelers" in violation of Section 8(b)(2) and (1)(A) of the Act?

6. About May, did Respondent Union, through its agents, violate Section 8(b)(1)(A) of the Act by coercing Respondent Employer's employees who were "travelers" and not members of Respondent Union into signing cards whereby said employees requested their layoffs by Respondent Employer?

7. About June 2, did Respondent Employer violate Section 8(a)(1) and (3) of the Act by terminating employees Marsh and Kelly?

8. About June, did Respondent Employer violate Section 8(a)(1) and (3) of the Act by laying off its employees who were "travelers" and not members of Respondent Union?

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Alleged Refusals to Refer: Cases 19-CB-4486, 19-CB-4496, 19-CA-4501, and 19-CA-4650*

1. The facts

NECA, on behalf of its employer-members, and Respondent Union are parties to a current collective-bargaining agreement, effective by its terms from July 1, 1981, until June 30, 1984, covering electrical work in eight southern Washington counties and eight northern and western Oregon counties. Said contract requires that Respondent Union be the sole and exclusive source of referrals of employees to employment with the employer-members of NECA including Respondent Employer. To this end, the contract sets forth an elaborate system for the referral of manpower by Respondent Union. Thus, the latter is required to maintain four registers of applicants for employment, and each applicant is registered in the highest priority group for which he qualifies. The criteria for each group are as follows:

Journeyman Wireman—Journeyman Technician

GROUP I—All applicants for employment who have four (4) or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Labor Union of the IBEW or have been certified as a Journeyman Wireman by any Inside Joint Apprenticeship and Training Committee and who have been employed for a period of at least one year in the last four under a collective bargaining agreement between the parties to this Agreement.

GROUP II—All applicants for employment who have four or more years experience in the trade and who have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Local Union of the IBEW or have been certified as a Journeyman Wireman by any Inside Joint Apprenticeship and Training Committee.

GROUP III—All applicants for employment who have two or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this Agreement.

GROUP IV—All applicants for employment who have worked at the trade for more than one year.

These registers, which are termed out-of-work lists, list the applicants in chronological order "of the dates they register their availability for employment." Whenever an employer-member of NECA advises the business manager of Respondent Union that he requires a specified number of applicants, the business manager refers individuals by first utilizing the Group I register and calling

applicants in order of their place on the list and then, in the same manner, successively from the group II, group III, and group IV out-of-work lists. Finally, the employer-members of NECA have the right to reject any referral and, on such an occurrence, an applicant may return to Respondent Union's hiring hall and have his name returned to its same place on the appropriate out-of-work list.⁴

Walter Marlatt is an assistant business manager of Respondent Union and has been its hiring hall dispatcher for the 2-year period preceding the hearing. He testified that, when contractors need workers, they either write or phone in their orders and that these are placed in a book called the contractors' book. For each order, the hiring hall secretary, Lori Johnson, writes in the date and time of the order, the contractor's name, the location of the job, the requested number of men, the names of those dispatched to the job, and the dates of said dispatches. Said document was received into the record as General Counsel's Exhibit 6. With regard to applicants for dispatch, Marlatt testified that they do not have immediate access to any of the out-of-work lists; rather, they are required to ask to sign in, and a secretary will hand the book to them. Within each sign-in book, there are spaces for the date the applicant's name, his address, phone number, whether or not the applicant possesses Washington or Oregon electrician licenses (certificates of competency), specialty as a certified welder, past rejections, the next referral, the date of same, and the termination date for the job. Book 1, the out-of-work book for the period June 1980 through May 21, 1982, covering all the journeymen wiremen (JW's) at issue in these cases, was received into the record as General Counsel's Exhibit 5. The witness testified further that, while contractors may not call applicants by name, they may make a "classification call," whereby the contractor requests an applicant with ability as a welder or an instrumentation specialist.

The collective-bargaining agreement specified that membership or nonmembership in Respondent Union shall not be a factor in the referral of applicants to jobs. In accord with this policy, individuals known as "travelers" have traditionally been permitted to sign the out-of-work books and be dispatched to jobs within Respondent Union's jurisdictional area. There is no dispute that travelers are members of International Brotherhood of Electrical Workers (IBEW) local unions located elsewhere within the United States who come to Respondent Union's hiring hall for dispatch to work. The record establishes that said individuals may go as far as establishing residence status in the State of Washington and remain travelers because they do not, for whatever reason, choose to join Respondent Union. At the crux of these matters is the latter's attitude toward these travelers. Marlatt testified that during the period covering the mid-1970s through 1980 and 1981 the triticities area (Richland, Kennewick, and Pasco, Washington) was one of

high employment for electricians due to the construction of three nuclear power plants on the Hanford Nuclear Reservation by the Washington Public Power Supply System (WPPSS). As a result, in the spring of 1982, 1800 individuals were working out of Respondent Union's hiring hall; of these, 1000 were travelers and 800 were members of Local 112. However, according to Marlatt, the situation abruptly changed in May with the complete shutdown of WPPSS #4 and the mothballing of WPPSS #1. The effect was catastrophic, with between 800 and 900 electricians⁵ losing their jobs and having to sign the out-of-work books.

Along with the truism that IBEW travelers are attracted to areas of high employment is what seems to be the universally accepted unwritten rule among IBEW members that when work becomes slack and significant numbers of members of the local in whose territorial jurisdiction they are working become unemployed, travelers will quit their jobs and move on.⁶ The problem encountered by Respondent Union during the spring of 1982, as admitted by Marlatt, was that not all the travelers "moved on." Thus, he identified the following excerpt from a report by Respondent Union's press secretary printed in an IBEW newsletter: "There is news of the April nineteenth shutdown at the Hanford 1 Nuclear Project expected. Travelers in our area reaching 7.2 in employment scale. The aftermath finds the work slowly stabilizing. There are approximately four hundred on book one with fifty of those being local brothers. *However, we do have a few travelers working in our jurisdiction who refuse to leave and make room for local members.*" (Emphasis added.) While denying that Respondent Union's attitude was one of hostility toward those travelers who did not follow the travelers' tradition, Marlatt acknowledged that travelers should have realized that a lean time for work was imminent and that they should not be taking work from the membership. Further, while denying that he sought to harass the travelers, Marlatt admitted that during this time period whenever he would notify a traveler of a dispatch, he would remind the person of the number of locals on the out-of-work list: "I told them that we had a call for whatever contractor and that we also had local people on the books." His purpose, averred Marlatt, was to merely alert the travelers of the facts—"I would assume that they wanted to know because they feel that they wouldn't want to take a job from a local man."⁷ Finally, denying that he would ever manipulate the out-of-work books in order to assure that Respondent Union's members received work, Marlatt candidly acknowledged that when work is available, "you're obligated to give [travelers] a job" but, when work is not available, "my loyalties would lie with the local people."

⁵ Marlatt's estimate was that "probably ten percent" of the total were members of Respondent Union.

⁶ The process is known as "drawing up." Marlatt denied that this term exclusively refers to travelers, asserting it includes anyone who decides "to leave the employment of that contractor."

⁷ If Marlatt was applying a subtle form of pressure on the travelers to conform with the IBEW unwritten law, such was slight compared to what traveler employees of Respondent Employer were subjected by Respondent Union's agents. See *infra*.

⁴ Respondent Union's practice is to treat rejections of applicants by contractors and applicants' refusals to accept dispatches in the same manner—that is, after three of either or any combination of three thereof, the applicant's name is "rolled to the bottom of the books." Such is applied uniformly to members and nonmembers of Respondent Union.

Regarding the matter of the necessity for applicants to have a State of Washington electrician's license in order to work in that State, Marlatt testified, "It's a state law, there's a penalty to the contractor if he hires someone without a license." Indeed, the State of Washington Electrical Installations Law, RCW 19.28, mandates that "no person shall engage in the trade of maintaining or installing electrical equipment . . . without having a current journeyman electrician certificate of competency . . ." (RCW 19.28.510.) Further, under RCW 19.28.620, "It is unlawful for any person, firm, or corporation to employ an individual . . . who has not been issued a certificate of competency or a learning certificate." Marlatt further testified that said statute became effective in the mid-1970s but that due to a lack of sufficient inspectors, enforcement at the nuclear power plant projects was virtually nil until late 1981 or early 1982 at which time the State hired more inspectors to do the job—"the exclusion was lifted and the license requirement was in effect for the nuclear powerhouses and the inspectors . . . were on the Hanford 1, 4 and 2 to enforce that law." The contractors were notified that they "would be in violation of the law and subject to a fine if [they] hired an individual that wasn't licensed." Prior to this time Respondent Union did little, if anything, to assure that those dispatched were properly licensed; however, according to Marlatt, when the State commenced enforcing the law, contractors demanded that only licensed applicants be dispatched—"when the calls would come in the person placing the [order] would say . . . we have to have people that are licensed." To ensure this, "we added the column on the book there that says when you sign the book do you have a Washington license."⁸ Under direct questioning from the General Counsel, Marlatt stated that "it's been an understanding between the contractors and Local Union 112 that we dispatch them people with a license . . ." Later, during cross-examination by the General Counsel, Marlatt became extremely vague regarding this "understanding," identifying only a single contractor who specified that only licensed personnel be dispatched and stating, "I'm not the only one in the office that would have had conversations with the contractors."⁹

As to the mechanics of ensuring that licensed applicants are dispatched, Marlatt testified that, if the license spaces in an out-of-work book are left blank, such signifies to him "they probably haven't a license." In order to be sure, "I would research the time prior that he signed the book to see if . . . he did or didn't have a license." If the spaces were still blank, he would check with the Washington Department of Labor and Industry, the administering agency.¹⁰ Denying that people habitually leave the spaces blank, Marlatt said that, if a person has the proper license, "I would say that they would normally write something in there." Regarding travelers, Marlatt testified that they are informed of the license require-

ments by a notice posted at the hiring hall. He further testified that travelers can work immediately on obtaining a temporary permit from the State of Washington Department of Labor and Industry. According to the state statute (RCW 19.28.570), a temporary permit in lieu of a certificate of competency may be issued on request to an out-of-state JW. Said permit is valid for the time period between filing for a certificate of competency and the examination for such which is given four times annually. If he fails, the traveler may work under the permit, pursuant to restrictions, for an additional 90 days. Marlatt testified further that it was the common practice of travelers to work under temporary permits and that they would normally exhibit said permit to Respondent Union's offices. Marlatt next testified that he did not knowingly dispatch unlicensed travelers after the understanding with NECA. However, analysis of book 1 for the time period including late 1981 and 1982 discloses several instances of individuals who either wrote "no" in the license spaces or indicated nothing in the spaces being dispatched to jobs.¹¹

There is no dispute that Respondent Union is required to dispatch applicants from book 1 in strict chronological order. The General Counsel alleges that such was not followed with respect to four travelers, Tom McKenzie, Robert Knapp, Jimmy Scott, and Michael June, for specified periods of time because each was, and is, not a member of Respondent Union. McKenzie testified that he is a member of IBEW Local 776, that he has been working out of Respondent Union's hiring hall since September 1975, but that he has never become a member of the Union. While denying ever being instructed to obtain a certificate of competency or ever having been asked if he possessed such by officials of Respondent Union, McKenzie stated that in 1980 he obtained a temporary permit from the Department of Labor and Industry and renewed it every 60 days thereafter by paying "between five and \$15."¹² Asked by me when he last obtained a permit, McKenzie said, "in '81" and then said it expired in the "first part of '82." Asked if he were certain as to the date he last renewed the permit, the witness repeated, "It was in December of '81." Later, when asked if he had a temporary permit in April and May 1982, McKenzie said yes, averring that his previous answers to the same question had been incorrect. Then, after conclusively changing his testimony to March 1982 ("about the last half") as the date of his last license renewal, McKenzie explained his inconsistent answers as follows—"Evidently I wasn't thinking." There was no corroboration offered for this testimony. In any event,

⁸ Examination of G.C. Exh. 5 discloses that the hiring hall license requirement space was included in book 1 as far back as June 1980.

⁹ He acknowledged that he does not know any other union official who might have discussed this matter with contractors.

¹⁰ As to whether he makes it a point to engage in such an investigation, Marlatt said, "Mostly."

¹¹ For example, on May 5, Francis Gillespie registered on book 1, indicated "no" in the license spaces and was later dispatched; on May 1 Harry Summers registered, wrote "no" in the license spaces, and was dispatched and, on April 30, Joe Prozynch and Jim Prozynch both registered, wrote "no" in the license spaces, and were dispatched. Further, the following people registered on book 1, wrote nothing in the license spaces, and were dispatched: Ray Roberts and Dean House (May 1), Darrell Sanders (May 3), Clarence Kelly Ellwein (May 4), and Henry Watts (May 7).

¹² McKenzie did not bother to comply with the licensing requirement between 1975 and 1980 as "[the State] did not push the license law as hard as they are pushing it now."

McKenzie signed book 1 on April 13, inexplicably leaving the Oregon and Washington license spaces blank.

Marlatt acknowledged that, from April 13 until May 20,¹³ McKenzie was bypassed for dispatch on, at least, nine separate occasions, that the individuals, who were dispatched, had signed the out-of-work book subsequent to McKenzie, and that eight of the nine were members of Respondent Union.¹⁴ As to why McKenzie was bypassed for referral during the above 5-week period, Marlatt explained that McKenzie had failed to indicate in the required spaces that he possessed a State of Washington or State of Oregon electrician's license.¹⁵ In this regard, the record establishes that each of the nine dispatched JW's indicated that he had a State of Washington license. Marlatt admitted that Respondent Union had dispatched McKenzie in the past and probably on occasions when he had no license,¹⁶ stating such occurred "possibly because I didn't realize he didn't have a license." He added that the situation was different in April as "I realized he didn't have a license." Marlatt continued, testifying that he checked whether McKenzie held a permit or certificate of competency on April 13 when "he [Marlatt] was in the process of filling a request by Electric Smith for men— I feel quite sure that that's what I did, yes." Despite the foregoing, Marlatt gave no explanation for selecting McKenzie, without a license, for dispatch to Lord Electric on May 20.

Robert Knapp a member of IBEW Local 349 in Miami, Florida, relocated into Respondent Union's jurisdiction in July 1977 and, on registering, began being dispatched from the hiring hall. Knapp testified that he first became aware of the State of Washington license requirement for JW's in 1977 while working at a job and that he immediately obtained a temporary permit. Thereafter, he testified, he regularly renewed his permit until 1980 when he relocated to the Phoenix, Arizona area. Returning to the tricities area in 1981, Knapp again obtained a temporary permit; however, he permitted the permit to lapse in February 1982 and admittedly failed to renew it due to monetary considerations. Nevertheless, he continued to register his name on the out-of-work list. With regard to Knapp, Marlatt acknowledged that from April 22 (the date on which Knapp again signed the out-of-work list, book 1) until May 19 (when he was dispatched, without a license, to Respondent Employer at WPPSS #2) the traveler was not dispatched to any jobs by Respondent Union. The record establishes that on four occasions (an Electric Smith job on May 10 to which James Poplin, who signed the out-of-work book

on April 30, was dispatched; a Lord Electric job on May 17 to which Ed Pefour, who signed book 1 on April 27, was dispatched; a job with Respondent Employer on May 17 to which Greg Rizzo, who signed book 1 on April 30, was dispatched; and Lord Electric jobs on May 13 and 17 to which Joe Henessey, who signed book 1 on May 3, was dispatched)¹⁷ Knapp was bypassed for dispatch in favor of members of Respondent Union. Marlatt explained that for each instance he "can't think of any other reason" but Knapp's lack of either a temporary permit or a certificate of competency as the reason for not dispatching him. Marlatt maintained that he did not "knowingly" dispatch applicants who did not possess a license and that if Knapp was later dispatched it was the result of "some kind of foul up."

Jimmy Scott, a member of IBEW Local 382 in Columbia, South Carolina, relocated to the tricities area in 1979, registered with Respondent Union's hiring hall, and was dispatched to Respondent Employer at WPPSS #2 soon thereafter. Subsequently, Scott worked for several other contractors. The record discloses that he does possess a State of Washington certificate of competency. There is no dispute that Scott signed the out-of-work book, book 1, on May 7 and that, through October 1, Respondent failed and refused to dispatch him on at least eight occasions, bypassing Scott in favor of members of Respondent Union who signed book 1 subsequent to Scott. While offering uncontroverted explanations as to why this traveler was passed over for dispatches to jobs with Electric Smith on May 17, with Brownell Electric on May 17, and with Bechtel on May 28, Marlatt offered absolutely no explanation for failing to dispatch Scott, rather than subsequent member book 1 signers, to jobs with Valley Electric on June 4, Concrete Coring on June 17, Johnson Controls on July 14 and 15, Maxwell Electric later in July, or thereafter. Respondent Union did offer into evidence its Exhibit 1, which is Scott's application for dispatch and which he completed on registering to use the hiring hall in 1979. Asked to place a check by the work he did not wish to perform, Scott checked commercial and industrial wiring. Although these were the types of jobs for which Scott was not dispatched during the time period at issue, he testified that he had never been dispatched for any other journeymen wiring work and Marlatt admitted that Scott had been dispatched to numerous industrial wiring jobs as others are "very few and far between." Finally, Marlatt admitted that he never relied on the above exhibit "because [Scott] did in fact go out on that type of work."

Michael June, who signed book 1 on April 16, was identified by Marlatt as a traveler and as one possessing both Washington and Oregon electrician's licenses. On viewing General Counsel's Exhibit 5, the out-of-work book, book 1, Marlatt acknowledge that June had been bypassed for dispatch to jobs in favor of Respondent Union members who signed book 1 subsequent to him on

¹³ On May 20, without a certificate of competency, McKenzie was dispatched to Lord Electric; however, the order was subsequently canceled.

¹⁴ Dick Pendleton Jr. who was a traveler but who indicated that he had a Washington license, signed book 1 on April 19 and was subsequently dispatched, instead of McKenzie, to a job with Respondent Employer.

¹⁵ Marlatt asserted that the normal practice of travelers was to mark a "yes" in the license spaces if they possessed temporary permits. According to him, all travelers are told of the procedure for obtaining such permits and certificates of competency when they initially register with the hiring hall; from this, they know to mark "yes" in the license spaces.

¹⁶ McKenzie testified that, despite having temporary permits, his practice was to write "no" in the license spaces in the out-of-work book, book 1. Notwithstanding this, he was dispatched to Respondent Employer on July 30, 1981.

¹⁷ Knapp was also bypassed twice in May for jobs in Yakima, Washington. Said jobs were given to Yakima residents who were members of Respondent Union. Marlatt explained that Yakima was a "free zone" to which a contractor need not pay a travel fee. Therefore, the practice is to give said jobs to residents of those areas.

at least 14 occasions—Bechtel on April 21; Lord Electric on May 10; Johnson Controls on May 4; Respondent Employer at WPPSS #2 on April 24; Allen Electric on April 27; Total Electric on April 29; Johnson Controls on April 27; Bechtel National on May 19; Lord Electric on May 10; and Electric Smith on May 10.¹⁸ For none of these and, indeed, the entire time period from April 16 until May 19 did Marlatt offer any explanation for the failure to dispatch June.¹⁹

A peripheral issue to the aforementioned alleged unlawful refusals to refer concerns the legality of Respondent Union's failure and refusal to permit hiring hall applicants to peruse the out-of-work list, book 1. In this regard, Robert Knapp testified that, concerned over perceived bypassing of their names on book 1, McKenzie, Knapp, and two other travelers visited Respondent Union's office and requested to examine book 1. Ultimately, they spoke to Marlatt who denied said request, stating that "he knew it was wrong but they had to do it." Marlatt admitted that Respondent Union's practice is to refuse applicant requests to examine any of the dispatch books and that Knapp, June, and Scott were denied access to book 1 for the purpose of inspecting the contents. According to the dispatcher, the decision in this regard was reached jointly by him and secretary Lori Johnson—"When the work picture became so grave, so many people working out of the union office, we had pages missing and as you can see from the book one it's pretty tattered, so to keep our records correctly we decided that we shouldn't leave the book out where it can be thumbed through and pages lost . . . if a person wanted to know exactly where they were on the book, we would look it up for them"²⁰

2. Analysis

It has been established law that a labor organization which, pursuant to contract or other arrangement, operates a hiring hall and is the principle source of manpower for various employers is obligated to refer job applicants without regard for their union membership. More specifically, where said exclusive hiring hall specifications provide for referral of applicants on a first-in first-out basis, a labor organization violates Section 8(b)(1)(A) and (2) by giving preference to its own members over

nonmembers who are likewise registered. *Iron Workers Local 373 (Building Contractors)*, 235 NLRB 232, 238 (1978); *Plumbers Local 137 (Hanes Construction)*, 207 NLRB 359 (1973); *Operating Engineers Local 406 (New Orleans AGC)*, 189 NLRB 255, 264 (1971). There is, of course, no dispute herein that Respondent Union operates an exclusive hiring hall and is the only source of journeymen wiremen for NECA employer-members within the labor organization's territorial jurisdiction. There is equally no dispute that the months of May and June represented a period of catastrophically high unemployment, due to the stoppage of construction of two of the three WPPSS nuclear power plants on the Hanford Nuclear Reservation. Such resulted in at least 550 persons signing book 1, the JW out-of-work list, the vast majority of signers being travelers but a significant number being members of Respondent Union. Although he denied that Respondent Union harbored animus toward those travelers who, by registering on the out-of-work list, book 1, refused to abide by the hoary IBEW creed to move on when work became slow and numerous local people were out of work, I do not credit Walter Marlatt, the hiring hall dispatcher, in this regard. Thus, he admitted that Respondent Union prepared a report for the IBEW newsletter in which it reported, "we do have a few travelers working in our jurisdiction who refuse to leave and make room for local members," and that his practice was to tell travelers, at the time of dispatch, that many local people were "on the books." I found utterly disingenuous his disclaimer of responsibility, on the part of the leadership of Respondent Union for the quotation which appeared in the IBEW newsletter and believe such accurately reflected the leadership attitude toward recalcitrant travelers in the spring of 1982. Further, given the obvious control over the travelers' livelihoods by those administering Respondent Union's hiring hall, Marlatt's above comment to travelers should not be viewed as a mere reminder, as he innocently suggested, but rather as a warning to them for continuing to utilize the hiring hall in violation of Section 8(b)(1)(A) of the Act.

Bearing in mind the foregoing and the Board's admonition that "the operation of a union hiring hall imposes considerable responsibilities on the union agents in charge of the hall,"²¹ I shall initially examine the unexplained failure by Respondent Union to dispatch travelers Michael June and Jimmy Scott during the time periods at issue. In this regard, Respondent Union falls back on the multitude of people registering on book 1 during April and May and argues that any failure to dispatch was as a result of "error" and not discriminatory motivation. Contrary to Respondent Union, I do not believe that mere error adequately explains the great number of occasions at which both travelers were bypassed for dispatch in favor of local members. This is particularly significant given Marlatt's statement that he regularly checks back pages, presumably to ensure that he has missed no one, before making a dispatch. In these cir-

¹⁸ June was not dispatched on four other occasions; for these, Marlatt gave uncontroverted explanations. Thus, union members Steve McCalmant and George Post were dispatched to Bechtel on April 19 as the job steward and assistant job steward, respectively; Daniel Ramos was dispatched to Bechtel on April 21 after that employer exercised a contractual right to request a minority worker; and Alan Alanquist was dispatched to Bruce Cadet on May 10 after that company requested a journeymen welder.

¹⁹ It is noted that approximately 556 applicants signed book 1 between April 1 and May 15. Examination of it reveals that as almost all signers had local addresses, it is impossible to ascertain whether a signer is a traveler or a member of Respondent Union.

It is further noted that Marlatt admitted that he checks the back pages of book 1 before he dispatches anyone to a job.

²⁰ At the time of the hearing, the condition of book 1, as it appeared to me, was reflective of an old book, with a loose cover and loose pages. However, it should be borne in mind that the hearing occurred approximately 10 months after the events at issue, and Marlatt admitted he "couldn't testify" that book 1 was in the identical condition in the spring of 1982 as at the time of the hearing.

²¹ *Sachs Electric Co.*, 248 NLRB 669, 670 (1980), *enfd.* in part 668 F.2d 991 (8th Cir. 1982).

cumstances, I find the failures to dispatch June and Scott to be violative of Section 8(b)(1)(A) and (2) of the Act. Next, with regard to travelers Robert Knapp and Thomas McKenzie, Respondent Union does not dispute the failure to dispatch them during the time periods at issue but rather asserts that the bypassing for dispatch of each in favor of local members resulted from the failure of either to indicate possession of a State of Washington electrician's certificate of competency or a temporary permit. Contrary to Marlatt's assertions in this regard, I found his testimony regarding the "understanding" between Respondent Union and NECA contractors that the former would refer only licensed JW's to be vague as to specifics and, therefore, not credible. Moreover, assuming the existence of such an understanding, Respondent Union's enforcement of such was haphazard, with individuals who either wrote "no" in the license spaces or indicated nothing being often dispatched. As to McKenzie, while I do not believe he possessed a temporary permit during March, April, and May,²² Marlatt admitted dispatching him at times when he lacked a license and failed to explain how he came to dispatch the traveler to Lord Electric on May 20 when McKenzie's lack of a license situation remained unchanged. As to Knapp, despite his lack of a license, he was dispatched to Respondent Employer at WPPSS #2 on May 19 when he admittedly possessed no license or temporary permit. Marlatt's explanations that he never "knowingly" dispatched people without licenses and that Knapp's May 19 dispatch resulted from "some kind of foul up" are not credible given the state of the record. Based on the foregoing, including Respondent Union's apparent attitude toward recalcitrant travelers, I believe license requirements were not factors in the respective bypassing of McKenzie and Knapp and that Respondent Union's conduct toward both violated Section 8(b)(1)(A) and (2) of the Act.

Regarding the refusal by Respondent Union to permit either Knapp, June, or Scott to examine the contents of book 1, Marlatt testified that no applicants (local members or travelers) are permitted to examine the dispatch books and that the reason for this is the physical condition of the books—"pretty tattered." He explained that if anyone wishes to obtain information from the book, he or a secretary inspects the book. The General Counsel argued that such violates Section 8(b)(1)(A) of the Act as there was no showing that the book 1 was in such physical condition to justify such a refusal and as the real purpose herein was to keep those travelers who were bypassed for dispatch from learning the true facts herein. In support counsel cites *Bartenders & Beverage Dispensers Local 165 (Nevada Resort Assn.)*, 261 NLRB 420 (1982). Therein, the Board held that the refusal of a labor organization to permit a hiring hall applicant to inspect the dispatch records was in breach of its duty of fair representation and was violative of the Act unless such in-

spection could be shown as "burdensome" or said records contained "truly confidential material." Therein, Respondent Union argued that the records were confidential and that the general public should not be permitted to view the records. Herein, Respondent Union's only defense goes to the physical condition of book 1. However, there is no evidence of the document's physical condition during the spring of 1982, and, while examination at the hearing disclosed a loose binding and perhaps loose pages, it did not appear in such a distressed condition so as to excuse the burden placed on Respondent Union, by dint of its duty of fair representation, to permit inspection of its hiring hall dispatch records. Accordingly, I find that Respondent Union's refusal to permit travelers the opportunity to examine dispatch records is violative of Section 8(b)(1)(A) of the Act. *Nevada Resort Assn.*, supra.

B. The Layoffs/Terminations of the Travelers at WPPSS #2: Cases 19-CB-4650 and 19-CA-15220

1. The facts

The Washington Public Power Supply System (WPPSS) is a consortium of power companies engaged in the construction of nuclear power plants in the State of Washington. During the 1970s construction commenced on five such plants, with three WPPSS #1, WPPSS #2, and WPPSS #4, located on the Hanford Nuclear Reservation, located in Richland, Washington, and within the territorial jurisdiction of Respondent Union. With regard to WPPSS #2, Bechtel is the construction manager on the project and Respondent Employer, pursuant to a contract with WPPSS, is engaged in the installation of all electrical conduit and cable equipment. While there is no contractual relationship between Bechtel and Respondent Employer, the former directs the jobsite work of the latter by submitting documents, such as work schedules and work packages, to it; Respondent Employer, in turn, constructs its own work schedules to fall within Bechtel's overall planning and "manloads" the project in order to perform the particular types of work required. Respondent Employer's supervisory hierarchy at WPPSS #2 begins with Ralph Koontz, the construction superintendent. Beneath him are superintendents who are in charge of particular aspects of the construction work. Each superintendent has below him general foremen, who oversee the work of several crews, each of which is supervised by a foreman.²³ Pursuant to its membership in NECA, Respondent Employer and Respondent Union have had a continuing collective-bargaining relationship, with the former obtaining necessary manpower from the latter's hiring hall.

The genesis of all events herein is found in the financial difficulties of WPPSS and its inability to completely finance its system of five nuclear power plants. Such culminated in January 1982 with the shutting down of two

²² I cannot, and do not, credit McKenzie that he possessed a temporary permit in March 1982. His initial response that he last held one in December 1981 was a most emphatically stated one and one which I believe was the truth. It struck me that his later response that he had one in March was merely an effort to cover up a flaw in his testimony. Further, I was not impressed with his explanation for his changed testimony.

²³ There is no dispute that Koontz, the superintendents, and the general foremen are supervisors within the meaning of the Act. Respondent Employer stipulated that several foremen were supervisors within the meaning of the Act but not as to others, including Ed Jeffs.

of the projects, WPPSS #4 and WPPSS #3. According to Koontz, the shutdowns "caused ripples throughout all their plants." Subsequently, rumors began circulating that WPPSS would next be forced to mothball for a lengthy period (of between 2 and 5 years) either WPPSS #1 or WPPSS #3. Koontz testified that in mid-April he was informed by a WPPSS engineer that WPPSS #1, which is located a short distance from WPPSS #2, had been selected as the project to be mothballed.²⁴ Such was confirmed by media announcements later in the month, and about April 30, all electrical and other construction work on WPPSS #2 was halted. Koontz testified that this event had a rather profound effect, leaving "the whole area, as far as construction, in bad straits [sic]."²⁵ With regard to the effect of the mothballing on the workers at his project, Koontz stated, "You had something in the neighborhood of probably 8000 people working on [WPPSS #1, WPPSS #2, and WPPSS #4], and all of a sudden, everybody understood that in a very short time there would only be enough people to man one plant. So it was a lot of conversation and a large upheaval."

An aspect of this "upheaval" seems to have been that several traveler JW's, apparently honoring the IBEW tradition, announced their desires, to Respondent Employer's supervisors and to agents of Respondent Union, to leave the project and, thereby, permit the members of Respondent Union who had recently been laid off or terminated to work in their stead at WPPSS #2. For example, Respondent Union's job steward, Paul (Skip) Elgin testified that, "I had many, many travelers coming to me, telling me they wanted to quit and go someplace else." Also, Donald Day, Respondent Employer's swing shift general foreman, testified that commencing in April, "There was an expression from many of the [travelers on his crews] at that time due to the impending shutdown of unit number one . . . that they certainly did not want to be responsible for taking a local man's job and they expressed the desire for reduction of force whenever it could be arranged."

Ralph Koontz testified further that other than a psychological effect on the workers, the mothballing of WPPSS #1 had a tangible effect on work at WPPSS #2—in late April and early May, a large percentage of the pipefitters employed by Bechtel abruptly left the project, decreasing that workforce from 600 to 400 persons within a 1-week period. According to Koontz, the significance of this decrease was that "our work is basically restrained . . . on the mechanical installation being complete, of which is basically done by the pipefitters," and the effects were immediate: "It was like throwing a stonewall in front of us . . . when we cannot get to our installation, our specifics, my field superintendents start telling me and my field engineers reporting to me as to what cannot be completed as per schedule." Koontz

stated that he "immediately" recognized that a reduction in force would be required—"At this point in time, we see a reduction coming about due to lack of work. The workload is falling off . . . So that tells me I have to make arrangements to reduce my force." In the first week of May, according to Koontz, Respondent Employer employed approximately 250 electricians; while considering how many individuals to lay off, "I began to get requests . . . inquiries about . . . a reduction in force and people leaving." Said information was transmitted to the construction superintendent "through the job stewards and Mr. Larry Caprai, the assistant business representative . . ." Skip Elgin, who, as stated above, received inquiries from travelers regarding leaving the project, testified that he informed Koontz of these—"I discussed with Mr. Koontz all these people wanting to quit . . . I informed him that there was many travelers out there that wanted to quit and leave the jurisdiction . . . he said that he would see what he could do about it."

Koontz also discussed the travelers, who comprised 25 percent of those electricians working for Respondent Employer, with Larry Caprai, a conversation extremely critical to the General Counsel's theory of the alleged unfair labor practices in these matters. They spoke on May 3, with Koontz testifying concerning the conversation as follows: Caprai visited the jobsite and "stated that he was concerned about whether we were going to have a reduction in force, that a lot of people were asking him what we were going to do. I told him I didn't rightly know right at the time, but that I was sure that we would be having a layoff in the near future. He stated that he would appreciate me keeping him abreast of it . . ." Koontz continued, saying that the situation at WPPSS #1 was also discussed—"And at that time, they were laying off a hundred to two hundred people a day." As a result of this conversation, Koontz spoke to his immediate superior, Project Manager Chuck Peckham, both about the necessity for a reduction of force and "that the people in the field that were talking about leaving were probably mostly travelers."²⁶ Peckham, in turn, spoke to Respondent Employer's operations manager "and the answer came back . . . that voluntary quit would be the only acceptable thing for the company," regarding the travelers' request to leave the project, "if it was outside the scope of our reduction in force, due to lack of work."

Apparently to corroborate Koontz' foregoing account of the meeting with Caprai and the aftermath, Respondent Employer's counsel offered into evidence its Exhibit 7, a portion of Koontz' construction diary, covering the time period mid-April through the end of June 1982. The excerpt for May 3 reads as follows: "The WPPSS Board of Directors decided on Friday to mothball unit #1 . . . This will cause a great shake-up in the craft personnel. Larry Caprai was in today to discuss with me a

²⁴ Koontz explained that when a construction project is shutdown, "you walk away from it." In contrast, "When you mothball one, you go through a process of tidying up loose ends and paperwork whereas you can come in and pick it up . . . at a later date."

²⁵ Analysis of book 1, Respondent Union's out-of-work list for JW's, discloses that from May 1 through 5, approximately 130 individuals registered as out of work.

²⁶ Koontz admitted that his belief that the electrician travelers were those requesting to leave was based on a mere assumption "and that concern was that if I had the same thing happen to me that happened to Bechtel in the pipefitters, I was going to be in a world of hurt if they all quit and left at the same time."

way to maneuver this change-over, stating he would like to work with us. Chuck talked to Mr. Davidson . . . and they felt that a quit would be the cleanest way." During cross-examination, Koontz was intensively questioned concerning his diary notations, maintaining that the words therein were his and not those of Caprai. Specifically denying that Caprai discussed the increasing numbers of local members unemployed as a result of the mothballing of WPPSS #1, Koontz explained what he meant by his words "to maneuver this change-over"—"What I meant . . . was that with people requesting . . . an ROF and me not knowing how many people I was going to get on my ROF, that that was somewhat more significant problem than what I had. I didn't know where it was going to end at the time." He further explained that he would have spoken to Peckham anyway that day inasmuch as he was contemplating a substantial reduction of force in the near future.

Stating that he reached the final decision to do so 3 days earlier, Koontz laid off 59 electricians and 2 welders on May 7.²⁷ However, shortly thereafter it was assertedly brought to his attention by the "field superintendent, the job steward, possibly Mr. Caprai again. I don't recall" that "we hadn't satisfied all the people inquiring about leaving the job and whether there was going to be any more reduction of force." According to Koontz, he heard the identical thing from electricians as he wandered around the site; people stopped him and "asked me if . . . we were going to have another [reduction of force] . . . is it possible to get on one" Such caused a rather significant problem for Koontz as there was no lack of work to justify another force reduction and as "I was pretty well tied at that time. I had the people that I needed to handle my workload." Also, Koontz was aware he could not just lay off those who desired such and hire new personnel from Respondent Union's hiring hall, for "it takes me a lot of training . . . and a lot of preparation to get those people up to par that they can replace somebody that's already in place out there." Another factor considered by Koontz in May 1982 was his assumption that those who wanted to leave were Respondent Employer's traveler electrician employees and his desire to avoid a similar situation as occurred in June 1980. Then, due to a strike in the construction industry, Koontz had decided it was necessary to implement a layoff and did so by laying off both travelers and Respondent Union members in the order required by the union contract. In protest of the fact that local members were laid off while travelers remained working, Respondent Union electricians engaged in a work stoppage against Respondent Employer. Also, the remaining traveler electricians quit en masse.

Koontz testified that he pondered the foregoing dilemma (his knowledge that layoffs were not justified against knowledge that workers desired to leave) and his options

for a week. What he wanted was a method by which travelers would ostensibly be laid off and replaced but by which, in reality, they would voluntarily quit,²⁸ and "what I decided to do . . . if I could get from the employee something that he signed . . . saying to me that he, in fact, was requesting a voluntary quit from the company, and not anything on my part, that that would satisfy me and at my convenience and timing that I would work it out. I would, in fact, rif them." Koontz testified further that his plan entailed utilized 3 x 5 index cards for this purpose. "And so what I did, I got my supervisors together, and I stated, 'I'll make cards available in my office for you to give to the manual craft. Those who want to make a voluntary ROF will state to me on that card,'" "I'll request a ROF at your earliest opportunity." "I want them all the same. I want the individual's signature. I want the foreman's signature, the GF's signature, and . . . the field supervisor's signature" Koontz, who admitted never having utilized such a system before, stated that he wanted to avoid any sort of legal problems; therefore, he not only wanted each card to be identically worded²⁹ but also wanted each signature verified. The witness said his instructions were to have each electrician (local member or traveler) given a card inasmuch as, while he suspected such was limited to the travelers, he was not sure which employees wanted to leave the project. Finally, the record establishes that Koontz decided to implement distribution of the 3 x 5 cards on May 19, that actual distribution by supervisors commenced on May 20, and that, according to Koontz, cards began returning to him "right away" and "I collected them and kept them in my possession."

Much of the testimony, during this portion of the hearing, concerned the events surrounding the distribution of the cards to electricians by foremen and general foremen and what was allegedly said by them and by Respondent Union's agents.³⁰ Jack Marsh, a traveler and a member of IBEW Local 442 in Redding, California, had been dispatched by Respondent Union to Respondent Employer at WPPSS #2 in April 1981. He normally installed lights and cable supports, working on a crew whose foreman was Robert VerSteg and general foreman was Neil Knight. Marsh testified regarding a conversation with Skip Elgin in the RAD waste building shortly after WPPSS #1 closed down. No one else was present. After discussing an unrelated matter, Elgin said "that the general foremen are going to be coming around this afternoon and they're going to ask you to sign a card saying

²⁷ Although the General Counsel does not contest the lawful nature of the layoffs, Koontz himself cast doubt on the necessity for such, explaining that his decision was based on the large numbers of pipefitters who quit their jobs with Bechtel and the expected effect on Respondent Employer. Koontz continued, saying that he did not know—and could not anticipate—that Bechtel would commence hiring pipefitters to the extent that its complement of such workers in July had increased to 950.

²⁸ Koontz testified that those travelers who quit in June 1980 were denied unemployment compensation. R. Emp. Exhs. 8(a) through 8(f) corroborates this, and Koontz stated that he wanted to avoid such a result but, at the same time, abide by the determination of his superiors that travelers would have to be considered as quits if in excess of those affected by a reduction of force.

²⁹ Koontz said the cards' language was critically significant as it would identify those desiring to leave and the signing employee was agreeing to permit Koontz to lay him off at the former's discretion. Finally, Koontz said he used "request an ROF" rather than "quit" to avoid the 1980 unemployment compensation difficulties.

³⁰ The job steward, George "Skip" Elgin, who, Respondent Union conceded, is its agent, admitted knowledge of the distribution of the 3 x 5 cards. He believed such resulted from his prior information, which he gave to Koontz, that travelers wanted to leave the project.

that you request a ROF at your earliest possible convenience" Marsh asked why, and Elgin replied, "Because that's the only way that the company will lay you off in this situation" Marsh said that Elgin did not explain what he meant. Later that same day or early the next day, according to Marsh, VerSteg and his entire eight-man crew,³¹ including Marsh, were gathered in the turbine generator building near the storage area for their respective toolboxes. Neil Knight approached and spoke to the entire crew as a group. He had the 3 x 5 cards and distributed one to each crewmember. On the cards was written "I ——— wish an ROF at your earliest possible convenience." Knight spoke about the cards, saying, "I want you to make one of these out, put your name in where the name has been left blank And then sign the bottom of it Your foreman, Bob VerSteg will sign it and I will sign it." Marsh could not recall whether Knight offered an explanation for using the cards but did recall someone yelling out that he needed time to think about it. He further stated that some crewmembers signed immediately. He did not as he needed the job at the time.

On that same day or the next, Marsh testified, he spoke to Knight at the same location. Marsh had beckoned to Knight as the latter passed by, and they were alone. "I told him that . . . I couldn't sign the card and he says why and I said because it would screw me up with my unemployment, it's a lie, I don't wish to be laid off and if the unemployment department ever found out about that they'd look at it the same as a quit. I says I'm not going to lie about it I says I'm just not going to sign the card" Knight seemingly became upset at this assertion, responding, "you're not going to get in trouble with the unemployment over this" Marsh repeated that he would not sign, and Knight "said something to the effect, what do you want us to do and I says, do whatever you want. He says . . . I can't just go around firing people and I says well, whatever" Sometime after this conversation with Knight, Marsh spoke again to Skip Elgin regarding the 3 x 5 cards. While unable to recall whether he previously told Elgin he would not sign one, Marsh quoted Elgin as asking "What's the problem with signing this card, Jack? And I says, 'Because it's a lie I'm afraid that if I sign that and go down to the unemployment office and sign up for unemployment, if they find out about it . . . I can go to jail.'" Also, Marsh recalled a conversation with both Elgin and Larry Caprai 2 days after receiving the 3 x 5 card from Knight. According to Marsh, Caprai asked what his problem was with signing the ROF card. Marsh replied that he did not want to talk about it and that Caprai should not worry about it.

Arthur Filardi, a traveler and a member of IBEW Local 501 in White Plains, New York, had been dispatched by Respondent Union to Respondent Employer at WPPSS #2 in August 1981 and worked on a wire pulling crew. Ed Jeffs was his foreman and Al Boil was his general foreman. Filardi testified that in mid- or late May, subsequent to the closure of WPPSS #1, Jeffs spoke

to his entire crew³² in a small office in the powerhouse and told them "that the number one project was laying off Local 112 members, they were becoming unemployed and that they were going to have to make room for them on this particular job and that being travelers that we're going to go." Filardi stated that he interrupted, saying, "that I wasn't going to quit, that I'd never receive any unemployment benefits if I quit and it'd have to be handled another way if they were going to remove me from the job." Other crewmembers began speaking, supporting Filardi's position. Jeffs³³ ended the meeting stating that he would get more information on the matter from the job steward. A few days later, Filardi testified, Jeffs approached crewmembers and travelers Jim Schmits, Chuck Serra, and himself and asked them to meet with Skip Elgin. Jeffs accompanied them during the meeting with the steward. The latter began, saying that

³² Filardi was sure that, at least, five other electricians on his crew were travelers. These included Jim Schmits and Chuck Serra.

³³ Although conceding the supervisory status of VerSteg, Respondent Employer contends that Jeffs, who did not testify, was not a supervisor within the meaning of the Act. The only information in this regard came from Filardi who testified that Jeffs assigned work to the crewmembers on a daily basis but that the electrical work "was the same type of work every day, but in different locations" and that "it was very routine." In assigning work, Jeffs, who received work instructions from others, could instruct the crewmembers as to where to work and could place men at different locations. Further, according to Filardi, Jeffs substituted for the general foreman on occasion and gave permission, without checking first with the general foreman, to Filardi to take time off from work.

It is, of course, the burden of the party alleging supervisory status to establish that such, in fact, exists. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); *Commercial Movers*, 240 NLRB 288, 290. Herein, presumably the General Counsel wishes to bind Respondent Employer by the alleged remarks and conduct of Jeffs; accordingly, the burden of proof as to the supervisory status of Jeffs was that of the General Counsel. The evidence on this point is rather flimsy. Thus, I note that the work is routine, that there is no indication that Jeffs utilizes "independent judgment" in assigning work, that there is neither evidence as to the frequency of the occasions on which Jeffs substitutes for the general foreman nor as to the extent of Jeffs' authority when doing so, and that while Jeffs independently granted permission to Filardi to take time off, there is no evidence as to the frequency of such occurrences. In short, I do not believe there is sufficient evidence in the record to adequately assess the supervisory status of Jeffs and, as the burden of proof rests with the General Counsel, I must conclude that he has failed to meet this burden. Accordingly, I do not find Jeffs to be a supervisor within the meaning of Sec. 2(11) of the Act.

However, this does not end the inquiry, for there remains the issue of whether he is an agent of Respondent Employer within the meaning of Sec. 2(13) of the Act. In this regard, the evidence establishes that Jeffs was distributing cards at the same time that other foremen and general foremen were engaging in the same activity, including instructing those wishing to sign what to write on the 3 x 5 cards. Moreover, the record establishes that all the card distribution was accomplished under the control of Ralph Koontz, the construction superintendent. For an employer to be responsible for the conduct of nonsupervisors, there need not be express authorization for the conduct. Rather, the issue is could the employees reasonably believe the nonsupervisor reflected company policy and was acting for management. *American Lumber Sales*, 229 NLRB 414, 420 (1977); *Aircraft Plating Co.*, 213 NLRB 664 (1974). I believe that from the fact that Jeffs, their crew foreman, was distributing cards, just as was being done by general foremen and other foremen to other crews, employees, including Filardi, could reasonably believe he was stating management policy in his comments regarding the signing of them. This is especially so when Jeffs was required to sign the card after the employees did so. In these circumstances, and based on the record as a whole, especially noting that Jeffs directs the work of the crew, assigns the work, and performed a task which was being done by more senior management personnel, I find him to be an agent of Respondent Employer within the meaning of Sec. 2(13) of the Act, binding the latter by his actions. *American Lumber Sales*, supra.

³¹ Marsh could recall the names of two other crewmembers: Dean Ericson and Paul Freed. Both were travelers.

he had cards "volunteering for a layoff and wanted us to sign them in order to get an ROF." The three employees refused to do so; "I told [Elgin] that as far as I was concerned I'd be quitting if I volunteered for an ROF. I said if there's a layoff coming, just let it happen, without signing" Elgin responded, "that there would be no way . . . to get off the job with an ROF if I didn't sign and that we would be gone and terminated" Filardi also recalls Elgin as saying on this occasion or at another meeting "that there were Local 112 brothers unemployed and . . . we're going to put them back to work out here and we're going to try to do this as nicely as possible and that's why we have these cards for you to sign so you can get an ROF. It won't hurt your employment, otherwise you'll be taken care of by termination."³⁴

Filardi testified that he and Serra were present during two or three other conversations with Skip Elgin regarding the "voluntary ROF" cards.³⁵ At one, according to Filardi, Elgin said, "just to do whatever you want to do . . . sign 'em or don't sign 'em." At another meeting, Larry Caprai was present with Elgin "and I asked Mr. Caprai . . . why do we have to sign these cards . . . why aren't we just laid off . . . I felt that signing these cards is a form of quitting . . . [Caprai] said that he'd looked into it but the only way that any of us would get off the job was with an ROF . . . otherwise we'd be fired." Filardi further testified that he did not actually receive a 3 x 5 card until early June and that he finally signed it on "I believe it was June fourth . . . it was exactly . . . a week to the day before I got laid off." Jeffs gave him the card, which was blank, and said, "they were all encouraging us to sign these cards and . . . leave." Finally, confronted with a "voluntary ROF" 3 x 5 card which he identified as that which he executed, Filardi had no explanation as to why it was dated May 8, 1982.

Michael Kelly, a traveler electrician and a member of IBEW Local 124 in Kansas City, Missouri, was dispatched by Respondent Union to Respondent Employer at WPPSS #2 in April 1981 and worked on the "terminations" crew. The foreman was Bill Crawford,³⁶ and Carl Morford was the general foreman. According to Kelly, shortly after the closure of WPPSS #1, Crawford mentioned to him "that there would have to be room made for the local people . . . that travelers would have to be laid off." Then, Kelly testified, in the second week of May, the foreman approached him in the RAD waste building and handed him a blank 3 x 5 index card. "He

asked me to fill out [the card], copying what he had which stated I would request an ROF at the company's earliest convenience and I was to sign it that he would sign it and the general foreman would sign it He said that it was requested from the company that they needed these cards so that they could lay us off." During cross-examination, Kelly averred that Crawford was aware 2 or 3 days later that Kelly would refuse to sign a "voluntary ROF" card. Thereafter, Crawford "brought up several times that 'he didn't want to fire me, that he wished that I would sign the card so he didn't have to'"—or words to that effect. Later during cross-examination, Kelly said that on two or three occasions, Crawford warned "that if I didn't sign the card that he would have to fire me." Kelly ultimately placed these conversations in "the week before I was terminated."

Besides the aforementioned warnings from his foreman, Kelly testified that he spoke to Skip Elgin shortly after receiving the 3 x 5 card from Crawford. "He asked me if I'd signed the card yet and I told him I hadn't and then he asked me if I realized that if I didn't sign the card that I would be fired and I said yes, and he asked me if I was going to sign the card and I said no, and then he said that he would have to have me fired." Elgin said nothing else regarding the card; however, a week later, according to Kelly, they spoke again, and "he wanted to know my reasons for not signing the card and I told him that it was wrong and it was a fraud and the unemployment and that I . . . couldn't sign it and he said that he would have to do what he thought was necessary and I said, that was fine, that I was doing what I thought was right" On cross-examination, Kelly described these two conversations in the following manner: "[Elgin] asked me if I knew if I didn't sign the card that I would be fired."³⁷ Kelly did not sign a 3 x 5 card based on his belief it would be a "fraud on the unemployment system"

Donald Dittman, a traveler and member of IBEW Local 86 in Rochester, New York, was dispatched to Respondent Employer at WPPSS #2 by Respondent Union in November 1981. He worked on a crew which performed typical JW work, installing conduit, supports, and related work; Steve Spencer was the foreman and Neil Knight was the general foreman. According to Dittman, each person on the crew was a traveler, including Gary Truger and Joe Sanderson. Dittman testified that in May "there was a work slowdown in Local 112's jurisdiction . . . caused by the shutdown of [WPPSS] Number 1." Many electricians had been laid off; this meant a "bleak future" for members of Respondent Union. In this general time period, according to the witness, he and Sanderson spoke to Skip Elgin in the RAD waste building. "Joe and I approached Mr. Elgin . . . to find out about the rumors that had been rampant about a so-called signing of a voluntary off slip. We both told him in no uncertain terms that we did not want to volunteer for an ROF or a layoff Mr. Elgin said, 'It would be in your best interest if you did. You could jeopardize your unemployment because you will be gone

³⁴ As to what Jeffs did or said during this meeting with Elgin, Filardi said that the foreman "was promoting us to sign these cards rather adamantly"

³⁵ Prior to one meeting with Elgin, Filardi quotes Jeffs as saying, "I don't want . . . to have to fire you. Why don't you sign this card."

³⁶ With regard to Crawford's supervisory status, Kelly testified that his foreman performed no unit work but rather "oversaw" paperwork coming to him. Further, Crawford assigned work to the crew and pulled men off of one job and gave them another when such "needed to be done." Also, Crawford authorized time off, gave ROF's to employees, and as will be described in detail infra made the initial decision, approved by the general foreman, to terminate Kelly. Unlike in the case of Jeffs, the record is sufficient, I believe, to establish that Crawford is a supervisor within the meaning of Sec. 2(11) of the Act.

³⁷ Kelly admitted understanding that Skip Elgin could not fire him.

from this job one way or another.' . . . We asked him if there could be any reductions . . . as far as our unemployment compensation . . . and he said, 'Don't worry about that. Fishbach/Lord and Ralph Koontz have agreed to take care of that and so there will never be any repercussions from you signing these cards.'

Dittman further testified that, on May 20 while he was working in the RAD waste building, Knight and Spencer approached his area. He could see that "they had cards in their hands . . . either one or the other." One of them said "something to the effect . . . we don't want to get rid of you, you're a good hand, you've done us a good job, but there comes a time when you realize the situation where the local men have to have jobs."³⁸ Dittman responded that he did not want to agree to a voluntary ROF. Knight replied, "that it was in my best interest to sign this or I would be jeopardizing my unemployment if I didn't." Knight continued saying, in effect, "either I sign that card for voluntary ROF or I would be dismissed from that job and unable to collect unemployment." Thereupon, either Spencer or Knight handed him a 3 x 5 blank index card and instructed him what to write on it. Dittman identified a 3 x 5 card, bearing his signature and the date of signing—May 20. Dittman testified that he signed a card to avoid having a bad reputation among his fellow electricians.

"Skip" Elgin and Larry Caprai testified on behalf of Respondent Union with regard to their alleged roles in the distribution of the 3 x 5 cards to electricians by Respondent Employer's foremen and general foremen. As stated above, Elgin admitted being aware of Ralph Koontz' decision to distribute the "voluntary ROF" cards. Admitting that there were traveler electricians at WPPSS #2 who did not want to leave the project but stating that he never identified for Koontz those travelers who desired to leave, Elgin testified that 3 x 5 cards were distributed to "just about everybody in the job that wanted a reduction of force" but that "the guy didn't want to sign it. He did not have to sign it." Also, he said that some of those who did not sign quit and "there was a few fired . . ." Regarding the testimony of Marsh, Filardi, and Dittman, Elgin generally denied threatening or attempting to influence them and said that whether or not any traveler followed the IBEW custom to leave a job at a time when significant numbers of local members were on the out-of-work list was a matter of individual conscience.³⁹ As to Marsh, Elgin testified, "Jack Marsh informed me that he would not sign one of those cards" and "from what I remember, I just told him he's got to do what he's got to do." Elgin continued, saying Marsh "informed me . . . that he'd been a member of the I.B.E.W. for many years, and he knew how to get terminated so that he could still draw his unemployment. And

he in fact told me that he had planned on being terminated right around the end of school, when his kids got out of school." Elgin denied telling Marsh that signing an ROF card was the only way he could be laid off or giving him any advice. Regarding the testimony of Arthur Filardi, Elgin stated that "he made several trips to my office with . . . two or three other people He was quite concerned that he did not want to sign one of those cards . . . I told him . . . you got to do what [you] got to do." Again, Elgin denied telling Filardi that a voluntary ROF was the only way to leave the project. Concerning the testimony of Dittman, Elgin could not recall any advice he may have given to the traveler as to requesting an ROF.

Larry Caprai, who was an assistant business manager of Respondent Union in May and June and was primarily responsible for servicing the electricians at WPPSS #2, testified that he visited the project 4 or 5 days each week. He stated that Ralph Koontz informed him of the distribution of the 3 x 5 cards and its purpose—"Mr. Koontz explained to me that the job had reached a point where it'd have to be a manpower . . . cutdown. He didn't give me any numbers, and he said this was a means for him to find out who . . . wanted to leave the job. He was aware of the problem that a lot of travelers would have left, either quit or taken ROF." Further, Caprai believed there was, in fact, a slowdown in work at WPPSS #2—"I can see a slowdown coming probably two or three weeks prior to the card situation."⁴⁰ With regard to speaking to travelers, Caprai denied approaching anyone and said he only discussed the 3 x 5 cards with employees when they mentioned them to him. He estimated that 10 to 20 electricians questioned him with regard to signing and that "I told them they had to do whatever they felt was right." Regarding his alleged conversation with Jack Marsh, Caprai denied approaching him on the jobsite and questioning him regarding signing an ROF card. As to Filardi, Caprai recalled a conversation in late May in Elgin's office at which time Filardi and two or three other electricians were present. "He was against signing the card. I think he . . . reflected that he was afraid he'd goof up his unemployment." Caprai told Filardi that he would look into the matter.

Four electrician employees testified on behalf of Respondent Union and Respondent Employer regarding the distribution of the "voluntary ROF" cards. Paul Freed, a traveler electrician and a member of IBEW Local 3 in New York City, New York, had been employed by Respondent Employer for 14 months at WPPSS #2. In May he worked on Steve Spencer's crew; Neil Knight was the general foreman. Freed, an alleged discriminatee, who, prior to testifying, had disclaimed any interest in receiving any monetary compensation as a remedy in these matters, testified that in either May or June Knight, accompanied by Skip Elgin,⁴¹ approached him at his

³⁸ Later, in his testimony, Dittman added these words—"[Y]ou're going to have to sign this or be gone."

³⁹ On rebuttal, James Mercure, a traveler and member of IBEW Local 231 in Sioux City, Iowa, testified that he worked as a JW at WPPSS #2 in May 1982 and was given a 3 x 5 card by his foreman, Bill Crawford, in order to request an ROF. Crawford "told me they had these cards and he told me what to put . . . on the card." Mercure, who stated that he did not want an ROF, testified that he filled out and executed a "voluntary ROF" card because of "rumors" he would be fired or laid off anyway.

⁴⁰ Caprai saw no inconsistency between his testimony and the fact that Respondent Employer hired between 50 and 60 electricians in June, testifying that on WPPSS #2 it was common, an "on-going thing," to have increases and decreases in a matter of weeks.

⁴¹ Freed testified that Elgin walks around the project continually, with and without Knight.

work area. Dean Ericson, Freed's work partner, was standing nearby. Knight said that if Freed wanted an ROF, he should fill out and sign the blank card which he gave to Freed. Knight then instructed the traveler what should be written on the card. Freed stated that Knight used the identical words in speaking to Ericson but denied that Knight said he "had to" sign the card or that Knight threatened to fire him if Freed did not sign the card. After Knight spoke, Freed turned to Elgin and asked him about the card, and Elgin "said the union had no official position on it, if this was the way they wanted to handle their reduction of force, termination that was fine with them." Elgin added "that as far as they were concerned there was nothing wrong with filling out these cards to request a reduction of force." According to Freed, he said his only objection to the card was the word "request"; he wanted it changed to "accept" because of possible adverse effects on unemployment compensation. Freed expressed this concern to Knight who said, "[U]nemployment would never see the cards." Freed further testified that he filled out and signed the card 1 hour later. He stated that signing was not "in any way" against his will, that Respondent Employer in no way forced him to do so, and that he was anticipating leaving the job in any event "because of the unemployment situation that had occurred with the shutdown of Number 1. I knew there were a lot of local hands on the books; I knew it was time for me to go."⁴²

James Parks, a traveler and a member of IBEW Local 73, had been employed by Respondent Employer at WPPSS #2 since August 1981 and in May 1982 worked on a JW crew for which Robert VerSteg was the foreman and Neil Knight was the general foreman. Parks testified that he first became aware of 3 x 5 "recipe" cards when Knight brought them to the crew's work area one morning. Each crewmember, including Jack Marsh, was present. Knight handed the cards to VerSteg, and the latter spoke to the crew. "Mr. Versteeg [sic] said, these slips were—if you requested an ROF or if you would like an ROF, we were to fill these out and they explained how to fill them out, if we wanted them . . . if you wanted an ROF you was to request an ROF at the earliest convenience and sign your name." According to Parks, he and others raised the point that "accept" would be better than "request" as the latter could interfere with their eligibility for unemployment compensation. Parks, an alleged discriminatee, who, prior to testifying, had disclaimed any interest in receiving monetary compensation as a remedy in these matters, stated that VerSteg did all the talking, that there were no threats uttered, and that Knight was silent during the meeting. Parks testified further that, immediately after VerSteg spoke, he filled out and signed the 3 x 5 card and that he did so "because I'm a guest in this local . . . I could see it was time to be moving on and it was just the thing to do."⁴³ Finally, Parks denied that either VerSteg or Knight pressured anyone to complete a card.

⁴² Freed acknowledged the IBEW "understanding" for travelers—"when work is slowing down, you allow the local hands the first right to work rather than you."

⁴³ Parks stated that he executed the card notwithstanding his need for a job at the time. He stated that Local 112 people had worked as travel-

ers in his area and left when work grew scarce. Mentioning the mothballing of WPPSS #1, Parks added, "I was aware that some of my good, close friends that are local brothers . . . were . . . on the out of work book, and it's their job here, not mine."

Joseph Sanderson, a traveler and member of IBEW Local 181 in Utica, New York, had worked for Respondent Employer at WPPSS #2 since October 1981. He testified that in May 1982 John Rudnick was his crew foreman and Carl Morford was the general foreman. Sanderson, an alleged discriminatee, who, prior to testifying, had disclaimed any interest in receiving monetary compensation as a remedy in these matters, stated that he received a 3 x 5 card from Rudnick who said, "[I]f I'd like to volunteer for an ROF to fill out the card and sign it." The witness, "because we knew at the time there were local hands on the book and it was time to move on," filled out and executed the card at that time and returned it to Rudnick. Sanderson further testified that after signing the card he began becoming apprehensive concerning the card's effect on his receiving unemployment insurance. Accordingly, he and Don Dittman spoke to the steward, Skip Elgin, "We just mentioned the fact that we knew of a time frame of maybe two years or so prior to that where some guys had volunteered for an R.O.F. and they were denied unemployment benefits . . . We were told that this would have no effect on our unemployment benefits and the card was not going to go anywhere." Finally, Sanderson denied Elgin saying it made no difference whether they executed cards as they would be laid off anyway.

Gary Truger, a traveler and member of IBEW Local 11 in Los Angeles, California, testified that he had been dispatched by Respondent Union to work for Respondent employer at WPPSS #2 as a JW in November 1981 and that in May 1982 he was on a crew for which Steve Spencer was foreman and Neil Knight was the general foreman. Truger, an alleged discriminatee, who, prior to testifying, had disclaimed any interest in these matters, stated he heard a rumor, regarding the use of 3 x 5 cards, a day or two prior to receiving one. The next day, employee Bob Mann, two other electricians, and he encountered Skip Elgin in the "spreader" room. "Skip came by and mentioned that the cards were available for us to sign . . . if we felt that we'd like to volunteer for a reduction in force . . . I was reminded . . . of the tradition . . . where when the work starts to slow down and there's local men on the books . . . that the travelers will request an R.O.F., or in some cases quit and move on to the next job." Testifying that Elgin raised this subject, Truger asked if there would be any problems with eligibility for unemployment compensation by signing, and Elgin replied that "there would be no problem with it." Elgin said nothing else on the subject, and immediately after the conversation, "I went around to [Spencer's] office and requested one of those cards . . . I think I was the first person on his crew to sign a card."⁴⁴ Truger recalled that Knight was present in

ers in his area and left when work grew scarce. Mentioning the mothballing of WPPSS #1, Parks added, "I was aware that some of my good, close friends that are local brothers . . . were . . . on the out of work book, and it's their job here, not mine."

⁴⁴ Truger testified that, even without the 3 x 5 cards, he had already decided to request an ROF earlier that spring and had alerted Spencer that he would do so "When I'm ready." He continued, stating that the fact that people were starting to speak about the subject was a "signal" to do something and that accordingly, he would have acted without speaking to Elgin.

Spencer's office but could not recall if he was instructed as to what to write on the card or what, if anything, Knight or Spencer might have said. However, he did specifically deny that either "encouraged" him to sign a card. Truger maintained that he did so because of the IBEW tradition of travelers moving on when work is slow and locals are laid off. He was aware of the situation caused by the closure of WPPSS #1 and believed it "inevitable that the local men would be signing the out-of-work books." Truger testified further that he discussed the "voluntary ROF" cards with Dittman as they rode to work on the day he signed a card. They were friends, having arrived at the project at the same time, and "we expressed concerns over signing the card and being able to receive our unemployment insurance." Truger could not recall any other concerns expressed by Dittman.

Four foremen and four general foremen testified on behalf of Respondent Employer regarding the distribution of the 3 x 5 cards. Jack Davis, a foreman, testified that he first was informed of the cards by his general foreman Carl Hawkins who instructed Davis to give one card to each man on his crew "with the opportunity for them to request a voluntary R.O.F." According to the foreman, the 3 x 5 cards were blank. Asked if Hawkins instructed him as to what should be written, Davis answered, "It seems to me as though it was, either was Mr. Hawkins or with the people that we agreed that there's been only one way you can ask for a voluntary R.O.F., and so we came up with that. I don't remember if it was Mr. Hawkins and I was talking about it or if it was the men and I was talking about it." In any event, Davis thereupon distributed the cards, one to each man on his crew. Of his seven- or eight-man crew, he could recall the names of three, Rick Probst, Jim Davis, and John Oestreich. Davis testified that he would give out a card as he encountered a crewmember on the job and that he said the identical words to each—"I indicated to them that this was a card to be filled out and signed if they requested a voluntary R.O.F." Davis said some asked questions, mainly as to the effect of the card on unemployment compensation. To find out, Davis spoke to Hawkins and to Larry Caprai of Respondent Union, and "the general feeling was that it would not affect the unemployment compensation." According to Davis he relayed this information to the crewmembers, and some said they wanted time to consider the matter. He told these people to just sign the card and return it to him. Denying that he pressured anyone and maintaining that signing was "strictly voluntary," Davis could recall just one person who did not sign—Probst, a journeyman wireman-welder (JWW).⁴⁵

General Foreman Carle Hawkins, a member of Respondent Union, had been employed in that capacity by Respondent Employer at WPPSS #2 for 6 years. In May, the foremen under him were Davis, Dwayne Gorlock, and Brent Garrup. Hawkins testified that, shortly

after WPPSS #1 was mothballed, Gorlock reported to him that an electrician on his crew, Bill Crabtree, had requested an ROF. He further testified that in the latter half of May, his superintendent, Woods, gave him some 3 x 5 index cards and said that Hawkins should, in turn, give them to his foremen, who were supposed to distribute the cards to their crewmembers, "that was wishing an R.O.F., could fill them out and sign those." Accordingly, Hawkins gave several cards to each foreman, and "I told [them] to pass [the cards] out to each man in the crew and anyone wishing an R.O.F. to fill the card out and sign it." The next day, according to Hawkins, electrician employee Crabtree spoke to him in the rod shack, and "he said he was glad to have signed one of the cards and was ready to go Because there was getting to be a lot of local people out of work"

Foreman John Rudnick testified that he was a member of Respondent Union and had worked for Respondent Employer at WPPSS #2 for 18 months. According to Rudnick, in May 1982, he was in charge of an eight-man electrician crew, consisting of Harlan Pearson, Herb Johnson, Joseph Sanderson, Dick Nevel, Bud Sharan, Tim Waite, Bob Young, and Roger Hall. Of these, Pearson, Sanderson, Johnson, Sharan, and Nevel were travelers, and the remainder were members of Respondent Union. Rudnick testified that on May 20, his general foreman, Cal Morford, gave him the 3 x 5 "voluntary ROF" cards. Prior to that day, he continued, crewmembers Nevel and Sharan approached him and said that "they heard that there was local members . . . signing the books and they wanted to leave as soon as possible." With regard to Morford, Rudnick stated, "He handed me the cards and told me to pass them out . . . to each and every one . . . and have [those that were requesting a voluntary ROF] state on the cards that they wanted to receive a voluntary R.O.F." Thereafter, Rudnick personally gave each crewmember a card, and "I told them to say on the card, if they were to request an R.O.F., to sign the card and turn them back in. There was no obligation in doing so." Rudnick testified that all five travelers (Sanderson, Nevel, Pearson, Johnson, and Sharan) filled out and signed a card. Finally, during cross-examination, Rudnick denied instructing the men what to write on the 3 x 5 card.

General Foreman Cal Morford, a member of Respondent Union, testified that, in May, he was given blank 3 x 5 cards by Superintendent Jim Claypatch and told to give them to his foremen, Rudnick, Bill Crawford, and Gary Brandermore, for distribution to all their respective crewmembers. Accordingly, Morford gave the cards to his foremen, telling them, "these were cards, if you would like to put in a request for an ROF, just state it on the cards and sign it." Morford testified that he was present when Crawford gave cards to crewmembers Charlie Gilles and Jim Mercure and overheard the conversations. As Crawford gave each a card, Gilles said he was ready to sign and did so right then. Mercure said he was concerned about unemployment benefits and did not sign. Gilles, meanwhile, returned his signed card to Crawford but said "to hold it and not turn it into the office until Crawford heard from him." Morford testified

⁴⁵ Although a traveler, Probst was not laid off in June. According to Davis, "he didn't request an R.O.F. and I'm glad he didn't because we needed journeymen wiremen welders." Davis estimated that of the 600 or 700 members of Respondent Union, only 20 to 25 were journeymen wiremen-welders.

further that his foremen reported back that some electricians were reluctant to sign the cards due to fears about unemployment compensation and that most of the card signers were travelers. He did not consider this unusual "because of the tradition in the industry" regarding travelers moving on when work is slow and there is local unemployment. During cross-examination, Morford said that two other general foremen, Knight and Bob Brown, were present when Claypatch gave out the 3 x 5 cards and that Claypatch did not specify what should be written on the cards. Finally, Morford said the cards were blank when distributed to employees; his instructions to the foremen were "if they want to request, to state the fact that they were requesting an ROF at the earliest convenience of the company."

Vern Turney, a member of Respondent Union, had worked as a foreman for Respondent Employer for 18 months. In May and June 1982, his electrical crew consisted of Earl Shiftlet, Ed Woods, Roger Lasot, Ruben Nostebon, Paul Woytowich, Pat Smith, Ed Burnet, Joe Antolick, Sandy Whitlock, and Art Klee. Woods and Burnet were apprentices; those workers, Lasot, Klee, Smith, and Whitlock were members of Respondent Union. Shiftlet, Nostebon, Woytowich, and Antolick were, according to the witness, travelers. Turney described the spring of 1982 as a time of "turmoil" due to the closure of WPPSS #4 and the mothballing of WPPSS #1, with the latter located just a half mile from WPPSS #2. The result of this was that travelers began requesting ROFs or spoke of voluntarily quitting in order to abide by the IBEW travelers tradition of leaving an area when work was slow and local members were unemployed. For example, Turney said, traveler electrician Earl Shiftlet "came up to me and said, 'I'd like to have an ROF just as soon as I can get one.'" Turney testified that, in late May, General Foreman Bob Brown gave him some blank 3 x 5 cards for distribution to his crewmembers who wanted an ROF. Although he gave no instructions as to what should be written on the cards, "[Brown] told me that I was to give a card to each person on my crew, that if they wanted to request a ROF, they should fill out the card and sign it. If they didn't want a ROF, they should not fill out the card or sign it, and he didn't care one way or the other." Following instructions, Turney handed a card to every crewmember, saying "If you want a ROF, fill this card out and sign it, give it back to me. If you don't want a ROF, don't fill out the card; there won't be any repercussion either way." Turney said no one asked him any questions and maintained that he did not instruct the men what to write. Three travelers, Shiftlet, Woytowich, and Nostebon, immediately signed cards after Turney explained their purpose.⁴⁶ On cross-examination, he stated that the three signers did so in his presence but not in the presence of the others and that, although he gave a card to each Respondent Union member, none signed a card.

On rebuttal, electrician Ruben Nostebon, a member of IBEW Local 292 in Minneapolis, Minnesota, testified

that, while technically a traveler because not a member of Respondent Union, he has been a resident of the tricities area since 1979. His testimony directly contradicted that of Turney. According to his version of the execution of the 3 x 5 "voluntary ROF" card, his general foreman Bob Brown approached him in the toolroom, gave him a 3 x 5 white card, and "he told us if we filled this card out and the guys that filled the card out will probably be the last ones with the ROF, and the ones that didn't fill them out probably be the first ones to go. And . . . there was ways of getting . . . rid of the people . . . if they were troublemakers . . ." Asked again what would happen to the nonsigners, Nostebon responded, "He said they'd probably be the first ones to leave." Rather than immediately executing the 3 x 5 card, Nostebon telephoned Skip Elgin, "and I asked Skip about it, and he said it was just for the company records . . . It had nothing . . . with . . . the union . . ." Believing that he would not be harmed by signing,⁴⁷ Nostebon filled out and executed the card.⁴⁸ Asked whether he actually wanted an ROF, he responded, "not really."⁴⁹ Finally, during cross-examination, the witness altered his testimony regarding the conversation with Brown. Thus, he testified that Brown gave him the 3 x 5 card, saying "[E]verybody was getting them cards to fill out." Unable to recall his reply, Nostebon continued that Brown "just explained that on the card that those that filled them out would probably be the last ones to be laid off, and the ones that protested would probably be the first ones."⁵⁰

Neil Knight testified that he had been a general foreman for Respondent Employer at WPPSS #2 since November 1978 and that his work mainly entailed laying out the work for his foremen and their crews. According to the witness, during May, rumors of a pending layoff were everywhere, with crewmembers asking him if such were true and how many would be affected. Notwithstanding the rumors, no superior mentioned such to him. Regarding the distribution of the 3 x 5 cards, Jim Claypatch, his superintendent, gave said cards to Knight, and "he told me to give them out to my foremen, and to

⁴⁷ After speaking to Elgin, Nostebon did not believe his unemployment compensation would be affected by the "voluntary ROF" card and, therefore, believed it safe to execute the card.

⁴⁸ Nostebon testified that he voluntarily signed the 3 x 5 card. However, he understood his choice was "to take an ROF or not sign it and take your chance of being fired . . ." He later explained that, if laid off, he would "still get" unemployment.

⁴⁹ Nostebon acknowledged the unwritten IBEW code for travelers but asserted that such did not apply in his situation as he relocated pursuant to a doctor's advice, purchased property, and built a home in the tricities area—"if I would have come out here for just the work, I would have been glad to leave . . . because I believed this is a good gesture to do. If you have a home in another state and you come out, just for the work . . . then I agree it's a good gesture to let the local people work."

⁵⁰ General Foreman Robert Brown testified on surrebuttal. He denied that he distributed any 3 x 5 cards to electricians, stating that such was done by Vern Turney. Specifically, Brown denied giving a card to Nostebon, denied threatening that Nostebon would be fired if he did not sign, and denied that those who did not sign would be the first to go. On cross-examination, Brown acknowledged his membership in Respondent Union.

Also on surrebuttal, Vern Turney testified that Brown was not present when he gave a card to Nostebon and that the latter kept the card no longer than 20 minutes prior to returning it.

⁴⁶ Joe Antolick, a journeyman wireman-welder, did not sign a card and was not laid off. Turney described the ratio of JW's to JWW's as 10:1 and said "not very many" JW's were qualified as welders.

have the men put on their card in their own handwriting that they would accept voluntary ROF at the company's most convenient time." Knight continued, saying Claypatch told him the purpose of the 3 x 5 cards was "there was a layoff coming"⁵¹ and "I was told it was strictly for the company's documentation."⁵² Thereafter, Knight gave the cards to his two foremen, VerSteg and Spencer, with instructions that cards should be given to all crewmembers. Knight admitted being present when some, but not all, of the cards were distributed—"We requested the men to sign them. We never told them they had to sign them." He recalled some employees asking "general" questions as to the cards such as what would be done with them and would they be submitted to unemployment. Knight further testified that he spoke to groups of employees about the cards, after distribution of them. With regard to Jack Marsh, Knight denied speaking to him on a one-to-one basis but did recall Marsh, in a group situation, saying he would not execute a 3 x 5 card "because he would not get his unemployment if he signed for a voluntary ROF." The witness also denied warning Marsh that he would be fired if he did not sign. Concerning Donald Dittman, Knight denied telling the former to sign a card or he would be fired or anything like that. He did, however, recall that Dittman "was one of the gentlemen that was concerned about being a voluntary ROF"

Steve Spencer, a member of Respondent Union and an electrical foreman for Respondent Employer for 6 years, testified that in May 1982 his crew consisted of eight JW's (John Cagle, Bert Sawyer, Bill Gregor, Al Muggli, Paul Freed, Dean Ericson, Gary Truger, and Don Dittman), two apprentices (Jerry Adams and Joe Vandeguard), and two welders (Bob Mann and Joe Wray). Spencer first became aware of the existence of the 3 x 5 "voluntary ROF" cards when Knight came over to him that month and, "If you have anybody on your crew that wants to volunteer for an ROF, have them fill out the cards and return them to you." The general foreman instructed Spencer to give a card to each person on the crew, except the apprentices. The cards were blank and, according to Spencer, Knight said that signers should write on the cards "I request a voluntary ROF at your earliest convenience"⁵³ Thereafter, Spencer dis-

tributed the cards to groups of employees, saying the same words each time—"I asked them if he wanted to volunteer for an R.O.F., to fill out the cards, stating that and sign it and turn it back in to me." Also, Spencer says he told the crewmembers exactly what to write: "I request a voluntary R.O.F. at your earliest convenience." As to the reactions of the electricians, Spencer testified that they all seemed reluctant to sign as they feared that the voluntary nature of the act could adversely impact on unemployment payments. Spencer spoke to Knight about this; Knight said the cards were just for the Company's records; and Spencer reported this factor to his employees. According to the foreman, six crewmembers signed cards—Ericson, Freed, Truger, Dittman, Wray, and Mann—and were eventually laid off.⁵⁴ Three travelers—Muggli, Gregor, and Cagle—did not execute cards and were not laid off.⁵⁵ Spencer averred to not being surprised that six travelers executed cards as "we have local people on the books and they were travelers" Finally, with regard to Dittman, Spencer maintained that he gave the former the 3 x 5 card and Knight was not present. Further, Spencer denied that Knight was present when he and Dittman spoke about the cards or that he ever threatened Dittman with termination if he did not sign. The witness added that his discussion of the cards with Dittman concerned "the same problem He didn't want the voluntary R.O.F. listed on the termination sheet."

Both Jack Marsh and Michael Kelly were terminated by Respondent Employer on June 2. Marsh testified that early that morning he spoke to his foreman, Robert VerSteg as the rest of the crew stood nearby. While they were talking, the foreman abruptly said, "I'm going to have to get your money," and I says, 'Well, whatever,' and . . . he was kidding"⁵⁶ A half hour later but before lunch, VerSteg approached Marsh and gave him a termination notice. Said document gave as the reason for termination: "Disruptive Attitude." Marsh questioned the foreman as to the meaning; VerSteg responded, "I had to write down something." To this, according to Marsh, he responded, "You weren't supposed to fire me today. I rode out here with Pat," referring to employee Pat Smith. VerSteg replied, "Why don't you ride home with Mike Kelly?" During cross-examination, Marsh denied telling either Knight or VerSteg that he would give them reason to fire him, and he denied saying he would not work as he was to be fired anyway.

Robert VerSteg, an electrical crew foreman for Respondent Employer during May and June, testified that "[Marsh] was a good mechanic, but he was a complainer, kind of a radical, always making a lot of noise. He was kind of anti-union, anti-company, pro-Jack Marsh" and that said attitude began to affect his job performance "towards the end of his employment." VerSteg continued, stating that in June everyone on the job sensed the pend-

⁵¹ Knight testified, "We were getting low on work They had shut the lighting off in a portion of the job, and some were starting to look for work to do." He added that it was "general knowledge" that work was slowing.

His testimony, in this regard, was contradicted by each employee witness, who was under his supervision. For example, Paul Freed denied that there was any sort of slowdown in late May, stating there was no lack of work for his crew. Further, he denied that the other crewmembers were concerned about a layoff due to lack of work. Also, James Parks testified that work was "plentiful" at the time and denied that any rumors of a layoff existed or that crewmembers were concerned about layoffs.

⁵² On cross-examination, Knight asserted that he did not know the "real purpose" of the cards; he was contradicted by his pretrial affidavit wherein he said, "The purpose of [the cards] was to find out if any employees wanted to volunteer for a layoff."

⁵³ Spencer had reason to believe that employees would execute such cards as earlier that month Freed and Truger had requested ROFs. According to Spencer, Truger was particularly nervous over the situation caused by the shutdown of WPPSS #1 and #4.

⁵⁴ The record establishes that both Wray and Mann were travelers.

⁵⁵ The record establishes that each was a JWW. Spencer testified that there was no unemployment in the area for those with a JWW classification and, thus, no reason for them to request an ROF.

⁵⁶ Marsh assumed he was to be fired as earlier Kelly reported to him that those who did not sign the ROF cards would be fired anyway.

ency of a layoff; "one time he approached me in the morning that he was going to be short on the job, didn't have much time left, and you don't really expect me to work too much anyway, did you? And during the course of the day he would find time to get off around the project and visit with his friends and what have you." VerSteg stated that he made the decision to terminate Marsh and that such was based on Marsh "bugging" him for a week or two about a layoff and on "a lot of minor reasons," such as "visiting around the project" and "slow to respond to a job that I had given him." Denying that Marsh ever requested firing, VerSteg quoted Marsh as saying several times "that it might be the best way for him to go, to give him several reasons, minor reasons to fire him."⁵⁷ Referring to June 2, VerSteg said, "I had been thinking about [terminating Marsh] most of the morning. I just decided that I was tired of listening to it and terminate him" Accordingly, VerSteg went to the general foremen's trailer, obtained a termination slip, wrote under "cause" a "poor and disruptive attitude," decided that such was too harsh, and changed it to what was stated above as the reason for termination.⁵⁸ Unable to recall whether it was before or after lunch, VerSteg gave Marsh the termination slip and asked what "Disruptive Attitude" meant, answered "I had to write something" VerSteg denied that Marsh's traveler status was a factor in the latter's discharge. During cross-examination, the foreman admitted that Marsh had never refused to perform work and that, asserting such just is not done in the construction industry, he never previously warned Marsh about his alleged attitude problems or disciplined him for such.

Michael Kelly testified that, at approximately 1 p.m. on June 2, his foreman, Bill Crawford, informed him that Kelly was fired. The foreman handed Kelly the termination notice, which stated as the reason for discharge: "Quit Work for Lunch Early." with regard to the stated reason, Crawford explained "that it would make it easier for me to get the unemployment with that kind of termination." Kelly further testified that Crawford did not discuss the merits of the discharge with him; however according to Kelly, Kelly did not leave work early for lunch that day, having left with the rest of the crew at 11:25 a.m., the customary time, with the knowledge of Crawford who was in the area.

Bill Crawford did not testify at the hearing. Cal Morford, the general foreman under whom Crawford worked, testified that the foreman made the decision to terminate Kelly, which decision Morford approved. Over the objections of the General Counsel, Morford was permitted to testify regarding a conversation in the "latter part of May" between himself, Kelly, and Crawford in the diesel generator building. Morford said he

was walking by when he observed the other two already talking. According to the witness, Kelly expressed "his concern over those ROF cards, concerning the fact that it would jeopardize his unemployment. And he said, 'If I take a quit, or if I voluntarily quit, it would also jeopardize my unemployment. So I'm requesting to be fired.' And at that point I said, 'I cannot fire you without cause.' And he replied, 'Well, I can take care of that. I can make cause.'"⁵⁹ Under cross-examination, Morford admitted that Kelly did not exactly say, "I want to be fired"; rather, he asked, "Why don't you fire me?" Kelly was not called as a rebuttal witness to corroborate or deny this testimony.

As stated earlier, after the 3 x 5 "voluntary ROF" cards were returned to Koontz, he kept them, waiting for an appropriate time to effectuate the layoffs of those who signed the cards. Koontz denied attempting to ascertain whether any signer was a traveler but admitted, "I had an idea" but "I did not check it out." The record establishes that the following individuals executed cards: Earl Shiftlet, Paul Woytowich, Joseph Wray, Gary Truger, Herbert Johnson, Ruben Nostebon, Robert Mann, James Parks, John Oestreich, Lawrence Smith, Joseph Sanderson, Donald Dittman, Paul Freed, Charles C. Gilles, Dean Ericson, James Mercure, James Davis, James Mullenax, James Smith, G. W. Drappo, Arthur Filardi, Harold Albert, and Charles Serra. The record further establishes that each signatory employee was a traveler into Respondent Union's territorial jurisdiction. There is no dispute that of these 23 electricians, 17 were laid off on June 4, and 6 were laid off on June 11.⁶⁰ According to Koontz, he laid the card signers off "as I could bring people in to replace them." As to how the layoffs were effectuated, Koontz testified that he accommodated the expressed wishes of the card signers "without any other consideration"; the most consideration he gave to the general foreman and foremen was "how many I could manage to extract from each one of them" Koontz had his office prepare the layoff slips, these were attached to each laid-off employee's final check, and the termination slips and checks were given to the job superintendents. Koontz further testified that these layoffs differed from past ones in that other than specifying numbers of employees Koontz normally left it to lower-level supervision to choose those to be laid off; for these June 1982 layoffs, "I told the field superintendents what names I had on the cards." The only discretion left to the foremen was "just a matter of which ones they wanted to let go first."⁶¹

Koontz asserted that, in laying off the card signers, he was accommodating their desires and admitted that said layoffs were "not for lack of work, that's correct." In this regard, the record discloses that Respondent Em-

⁵⁷ General Foreman Knight testified that he was once present when Marsh said to VerSteg "that he may have to be fired over something trivial." VerSteg attributed some sort of "scam" to Marsh whereby the latter asserted he could appeal a termination for trivial reasons to the unemployment people and prevail in obtaining unemployment compensation.

⁵⁸ Neil Knight testified that, on June 2, VerSteg informed him that he was about to fire Marsh. Previously, the foreman told him he was concerned with Marsh "standing around talking when he should have been doing work."

⁵⁹ Morford stated that Kelly had spoken to him previously regarding ROF's and about "getting fired." He did not elaborate.

⁶⁰ Those laid off on June 4 were Shiftlet, Woytowich, Wray, Truger, Johnson, Nostebon, Mann, Parks, Oestreich, Smith, Sanderson, Dittman, Freed, Gilles, Ericson, Mercure, and Davis, and those laid off the following week were Mullenax, Smith, Drappo, Filardi, Albert, and Serra.

⁶¹ This directly controverts the testimony of Neil Knight who asserted that he and his foremen chose those to be laid off and that said decision was not based on the 3 x 5 cards.

ployer hired 51 electricians, referred by Respondent Union, between June 2 and June 10 and 10 electricians on June 16. Koontz gave two reasons for the need to hire these individuals: the need "to accommodate" the card layoffs and an increase in manpower requirements during June due to increasing work. As to the 61 referrals by Respondent Union, the record further discloses that each was a member of Respondent Union. Koontz specifically denied specifying that locals, rather than travelers, be referred and there exists no record evidence to the contrary. Finally, Koontz testified that 11 travelers⁶² remained on Respondent Employer's payroll after June 30. I note that, with one exception, each was classified as a JWW about whom General Foreman Donald Day said, "[W]e needed the welders so drastically."

There were 15 employees, laid off in June, who, the record establishes, did not fill out and execute 3 x 5 "voluntary ROF" cards. Most of these individuals, each of whom was a JW, worked on the swing shift, for which the general foreman was Donald Day, a member of Respondent Union. He testified that three crews (a maintenance and two construction crews) worked under his supervision and that, of the 35 workers, half were travelers.⁶³ As stated earlier, Day testified that commencing in April travelers on his crews began expressing their desires to be included in future reductions of force due to the area job situation; he specified 13 such individuals who spoke to him. Thus, Ralph Payone requested to be on any ROF list because "there's going to be many local people out of work very soon"; Gary Yost requested an ROF due to the large number of locals on the out-of-work list and thanked Day for the job but it was time to go; Jimmy Andrews approached Day in May and said "that it was time for him to get his behind out of this area because there's local people's that's going to be needing some jobs"; John Haid and George Anderson, work partners, together spoke to Day and requested ROF's because of the areawide work situation; Tom Hanley requested an ROF in a "poignant manner," saying "You folks are going to need some jobs around here for your local people"; Tom Bauman requested an ROF in May and again in June due to the unemployment situation—"I don't want people thinking I'm some kind of a worm"; Richard Adler, said Day, was among a group who came to see him in May "and he indicated that he did not want to work out of this local if there was any local people unemployed or if his employment was going to cause any local people to be unemployed"; Delbert Jennings, stated Day, was an "older gentleman" who desired layoff for "personal reasons" and because of the unemployment situation; Howard Shinn, according to Day, was an avid golfer and requested an ROF to be able to accept a job opening and relocate to Florida; Wayne Crosby and Harry Albert were among the group who spoke to Day in May, Crosby wanted an ROF because of the number of locals out of work and as he is an avid "bass fisherman," and Albert desired to attend a

"family reunion"; and Barry Engleman said he would take an ROF when there was a choice between a local man and a traveler.⁶⁴ In addition, Day testified, Field Superintendent Pete Burggraff informed him that swing shift worker Gerald "Smokey" Stover told Burggraff "several times" that he would be willing to take an ROF.

Day testified that Burggraff gave him the aforementioned 3 x 5 cards for distribution to the swing shift crewmembers but that, based on the above-described conversations, he believed he knew the wishes of the travelers and did not think distribution of the cards was necessary. Accordingly, he did not do so. Day testified further that the job, on which the swing shift crews were working, "was definitely in the scope of being completed sometime in June. And at that time we knew there'd be a reduction in force. Everybody was aware of it." At the outset, Day averred that the entire swing shift work force could not be transferred to the day shift "because day shift was laying off anyway, and they wouldn't have room for all of us to shift back on to day shift."⁶⁵ He testified that he was given a quota of 15 electricians to lay off and that he was the person who determined which crewmembers would be let go. To implement the selection, according to Day, "personal preference" (the ROF requests) was a factor, along with proficiency and the ability to work with others. Clearly, however, Day, cognizant of "the code of the traveler . . . we prefer if we had work to go into an area we work and when that work winds down, we pick up our duffel and head to the next job," gave priority to the expressions of a desire for ROF; for he selected each of the individuals who assertedly so requested⁶⁶ as one to be laid off. Also, Day testified that Pil Yun Chung a traveler, was selected for layoff inasmuch as he was a book 3 welder and, under applicable layoff procedures, he "had no choice . . . but to lay him off." Said personnel actions were accomplished on June 28; ultimately, 17 individuals were laid off, 2 more than Day's original quota. Of the remaining swing shift crewmembers, their work ended at the end of June and, except for a skeleton crew, all were transferred to the day shift (this group included "mostly apprentices, maybe five or six local journeymen").⁶⁷ The General Counsel offered no evidence, either in their case-in-chief or on rebuttal, regarding the layoffs of the swing shift personnel.

⁶⁴ During cross-examination, Day admitted he was relating the "flavor" of his conversations with travelers—"Most of them used words very, very similar to that . . . They didn't want to put a local man out of work. It's time that the travelers clear out . . ."

⁶⁵ This is a rather dubious statement inasmuch as Koontz maintained work was increasing in June and as the record discloses that, in July, 15 electricians, all members of Respondent Union, were referred to Respondent Employer at WPPSS #2—presumably for the day shift.

⁶⁶ Day maintained that rather than the electricians' status as travelers their expressions of desire to be laid off was determinative. However, in his construction diary notation for June 28, Koontz referred to the personnel actions in the following manner: I reduced forces by 13 JW's (travelers) that went to the hall. Thus, to Koontz their status as travelers had significance.

⁶⁷ The two JWW's on the swing shift were not included in the June 28 layoffs.

⁶² The 11 travelers were Douglas Abbott, Joseph Antolick, John Cagle, Larry Fricke, William Greger, Allan Muggli, Raborn B. Roberts, Jerry Welch, Buckley Wilson, Star Agvanan, and Richard Probst.

⁶³ Day defined a traveler as "a person who is working in another local other than his home local."

In all, the General Counsel alleges that 38 individuals were unlawfully laid off by Respondent Employer in June 1982 and that 2 individuals, Marsh and Kelly, were unlawfully terminated.

2. Analysis

It is essentially contended herein that Respondent Union caused Respondent Employer to lay off its traveler electricians during the month of June in violation of Section 8(b)(1)(A) and (2) of the Act and that by complying and laying off the traveler electricians Respondent Employer engaged in conduct violative of Section 8(a)(1) and (3) of the Act. It is further contended that Respondent Employer terminated employees Marsh and Kelly pursuant to Respondent Union's demand or request or because neither is a member of Respondent Union—in violation of Section 8(a)(1) and (3) of the Act. In support, the General Counsel argues that Respondent Union's assistant business representative Larry Caprai "went to Ralph Koontz and asked him to maneuver a changeover from travelers to members" of Respondent Union; that Koontz devised the 3 x 5 card system to accomplish it; that agents of both Respondents "took matters from there"; and that the June layoffs were the result. Alternatively, counsel argue that, assuming Respondent Employer was not unlawfully motivated in distributing the 3 x 5 cards, Respondent Union unlawfully "aided and abetted" the execution of them or that Respondent Employer was itself unlawfully motivated in laying off and terminating travelers. Counsel for Respondent Union argues that there is no evidence that it demanded the termination of travelers by Respondent Employer, that said travelers voluntarily chose to leave, and that its agents Elgin and Caprai acted lawfully in discussing the 3 x 5 cards with employees. Likewise arguing that it was not unlawfully motivated, counsel for Respondent Employer argue that Ralph Koontz was, at all times, motivated by business considerations; that the travelers voluntarily requested ROF's and Koontz laid them off accordingly;⁶⁸ that Jack Marsh was terminated for cause;⁶⁹ and that Michael Kelly was terminated pursuant to his own request.

As set forth by the General Counsel, the main theory for the alleged violations herein is that Respondent Employer acceded to either a demand or a request from Respondent Union to terminate its traveler electricians. At the outset, it is settled Board law that, absent noncompliance with a lawful union-security provision, "a labor organization violates Section 8(b)(2) and (1)(A) of the Act when it attempts to cause or causes an employer to dis-

criminate against an employee because of his nonmembership in a labor organization, and an employer violates Section 8(a)(3) and (1) of the Act when it yields to coercive pressure of a labor organization and discharges an employee for this reason." *Rondicken, Inc.*, 198 NLRB 100, 102 (1972). During the hearing, the General Counsel stated that Respondent Employer would not have engaged in the distribution of the 3 x 5 cards and the eventual layoffs and discharges but for the conduct of Respondent Union; therefore, the initial issue for resolution must be whether Respondent Union acted in violation of Section 8(b)(2) of the Act. With regard to this, the core question is whether Respondent Union caused or attempted to cause Respondent Employer to terminate its traveler electricians who were not members of the former. To establish this factor, it is not necessary that the offending labor organization engage in conduct as strident as an outright demand; rather, cause "can exist . . . where an inducing communication is in terms courteous or even precatory as where it is rude and demanding." *NLRB v. Jarka Corp. of Philadelphia*, 198 F.2d 618, 621 (3d Cir. 1952). What seems crucial for the Board is that the labor organization's conduct, however characterized, must be successful. *Laborers Local 132 (Dubar & Sullivan Dredging Co.)*, 253 NLRB 475 (1980); *Carpenters Local 1092 (Walsh Construction)*, 219 NLRB 372, 376 (1975); *Teamsters Local 82 (Arlington Storage)*, 210 NLRB 838, 841 (1974); *Stereotypers Local 120 (Dow Jones)*, 175 NLRB 1066 fn. 3 (1969). Finally, "cause" may be established by circumstantial evidence and inferences of such may be drawn where the record warrants. *Groves-Graite, a Joint Venture*, 229 NLRB 56, 63-65 (1977).

Whether or not Respondent Union violated Section 8(b)(2) depends on analysis of the testimony of Ralph Koontz, in particular his account of the meeting with Larry Caprai on May 3. This is so; for Caprai, who testified prior to Koontz, failed to discuss the meeting, and no party recalled him to testify subsequent to Koontz' final appearance. Therefore, as to what Caprai said and the manner of his response, the credibility of the construction superintendent is of critical significance. In this regard, I was not at all impressed with Koontz' testimonial demeanor, which was suggestive of a lack of candor and of a witness struggling to cover up the true facts. Further, his responses, during cross-examination, particularly as to the Caprai meeting, were vague and unsatisfactory, and he and other witnesses directly contradicted each other on important points. In short, I do not credit his testimony herein. As to what actually was said by Caprai and Koontz on May 3, it is obvious that Koontz' testimonial account (Caprai merely reporting that people were inquiring about a possible reduction of force and asking to be kept informed of such) just cannot be reconciled with, and is the antithesis of, his own, prior construction diary notes of what they said ("Larry Caprai was in today to discuss with me a way to maneuver this changeover, stating he would like to work with us."), and his cross-examination explanation of what he meant by "maneuver this changeover" (a problem caused by not knowing the exact numbers of people who would be subject to an ROF) bears no relation to the normal

⁶⁸ Respondent employer asserts that the charge in Case 19-CA-15220 is not legally sufficient to encompass, besides the allegation that the Charging Party was unlawfully terminated, the alleged unlawful layoffs/terminations of 39 other individuals. I find such an argument to be without merit. There is nothing improper with alleging in a complaint the names of individuals, not specified in a charge, as additional discriminatees as long as said allegations involve the "same conditions" and the "same time." *El Cortez Hotel v. NLRB*, 390 F.2d 127, 130 (9th Cir. 1968). Herein, all the allegations of discrimination involve essentially the same factual context and occurred within a 1-month time frame.

⁶⁹ I reaffirm my ruling at the hearing that the charge in Case 19-CA-15220 is not time-barred by Sec. 10(b) of the Act. *Baltimore Transfer Co.*, 94 NLRB 1680, 1682 (1951).

meaning of the written words and appeared to be hopelessly contrived. The Merrimam-Webster dictionary (Pocket Books edition) defines maneuver as "an action taken to gain a tactical end" and changeover as a "conversion to a different function or use of a different method." Thus, while probably not utilizing their precise dictionary meaning, the words are admittedly his own and Koontz, during cross-examination, was not persuasive in denying that any but their normal meanings should be read into the words. Based on my analysis of Koontz' credibility, I believe the May 3 construction diary excerpt, rather than his testimony, is the accurate version of the meeting between Caprai and the former. Therefore, I find that Koontz recalled in his diary that the discussion between Caprai and him on May 3 concerned some sort of action or conduct, to be undertaken by Respondent Employer with the aid of Respondent Union, whereby some facet of the former's jobsite operations would be converted or altered.

Exactly to what Koontz referred in the aforementioned diary excerpt becomes clear on scrutiny of the record. Testimony of all the witnesses, including that of Koontz, establishes that the massive unemployment of Respondent Union members was well known and a source of "upheaval" among the electricians at WPPSS #2. Koontz testified that, prior to meeting Caprai, and probably from the latter as well, he was aware that some of Respondent Employer's traveler electricians desired to quit and leave the area. He also admitted that he and Caprai discussed the effect of the mothballing of WPPSS #2. These factors warrant the conclusion that, by "changeover," Koontz referred to replacing the traveler electricians who were then employed by his company with unemployed Respondent Union members and the inference that, during their meeting on May 3, Caprai and Koontz discussed how, with the help of Respondent Union, Respondent Employer would effectuate this replacement process. The record warrants the further inference that the impetus for this understanding surely came from Respondent Union. Thus, there is ample evidence from the latter's comments in the IBEW newsletter and from its treatment of travelers who registered for dispatch during this time period that Respondent Union's leadership was less than enamored with those travelers who continued to work in its jurisdictional area during a time of high local unemployment. Moreover, the Board has found unlawful previous attempts by Respondent Union to cause contracting employers to discharge travelers. *Electrical Workers IBEW Local 112 (Ajax Electric)*, 231 NLRB 162 (1977). The precise dialog underlying the understanding between Caprai and Koontz will undoubtedly never be fleshed out; however, "an express demand or request is not essential to a violation of Section 8(b)(2) of the Act. It suffices if any pressure or inducement is used by the union to influence the employer." *Carpenters Local 911 (Glacier Park Co.)*, 126 NLRB 889, 897-898 (1960).⁷⁰ Accordingly, based on the record as a whole, I

find that Respondent Employer, at the behest of Respondent Union, agreed to devise a method whereby it would replace its traveler employees with members of Respondent Union.

Whatever the precise terms of this agreement or understanding between Koontz and Caprai, I believe that the subsequent distribution of the 3 x 5 "voluntary ROF" cards was not an innocent search for information, as asserted by Koontz, but rather was in furtherance of the above understanding and, therefore, motivated by the travelers' nonmembership in Respondent Union.⁷¹ Support for this finding comes from the testimony of alleged discriminatee Arthur Filardi, who impressed me as being an honest and forthright witness and who is credited herein. On being given a 3 x 5 card by his foreman, Ed Jefs, who, I previously concluded, acted as an agent of Respondent Employer in distributing the cards, the latter explained their purpose: "that the number one project was laying off Local 112 members, they were becoming unemployed and that they were going to have to make room for them on this particular job and that being travelers that we're going to go." Jefs' admission, which, of course, is binding on Respondent Employer, was uncontroverted. Further, Filardi described a meeting with steward Skip Elgin during which the latter, obviously aware of the Respondent's scheme, said "that there were Local 112 brothers unemployed and . . . we're going to put them back to work out here . . . that's why we have these cards . . ." Elgin impressed me as a witness totally lacking in candor, and I do not credit him herein, noting also that he did not specifically deny the attributed quotation. In any event, the major problem confronting the Respondents was obtaining the signatures of the travelers. In this regard, Koontz was well aware, based on reports from his supervisors and from Skip Elgin and, probably, Larry Caprai that some travelers, adhering to the IBEW travelers' tradition, would, in fact, voluntarily execute the 3 x 5 cards. However, neither he nor Elgin and Caprai could, of course, be certain that *all* travelers would do so. Distribution of the "voluntary ROF" cards commenced on May 19, and what ensued were acts of coercion and inducement by Respondent Employer's general foremen and foremen and by Elgin and Caprai, utilizing identical, if not coordinated, tactics, designed to convince those reluctant and balking travelers to execute the 3 x 5 cards. If innocently motivated, and I believe such was not, there would have been no need for such conduct.

In this regard, Filardi, with fellow traveler Chuck Serra present, expressed his reluctance to sign a card on separate occasions to Ed Jefs, Skip Elgin, and Larry Caprai. It was uncontroverted that, in response, Jefs warned, "I don't want . . . to have to fire you. Why don't you sign this card." Further, at two meetings with Elgin, one of which Jefs ordered Filardi and Serra to

⁷⁰ In this regard, I note Koontz' fear of a repetition of what occurred in June 1980 at which time Respondent Employer's employees who were members of Respondent Union engaged in a work stoppage over the matter of Respondent employers equal treatment of travelers and local members for purposes of a layoff.

⁷¹ Discrediting the unreliable testimony of Koontz on this point, I find, based on his May 3 construction diary excerpt, that Koontz' admitted idea for utilizing the 3 x 5 cards originated from his superiors' admonition that as economic layoffs in excess of the early may ROF could not be justified, the travelers who were to be replaced by members of Respondent Union had to be considered as "quits."

attend, regarding his reluctance to sign, the steward warned that if he continued to refuse, Filardi "would be gone and terminated" and that, if he signed a 3 x 5 card, Filardi would receive an ROF; "otherwise you'll be taken care of by termination." As to Caprai, Filardi questioned the need for the cards, and the business agent responded that such were the only means to leave the job with an ROF; "otherwise we'd be fired." Elgin denied threatening or coercing Filardi, stating that his only response to the latter's stated reluctance to sign a card was "you got to do what [you] got to do." Based on my credibility evaluations, as between them, I credit Filardi.⁷² Caprai's version of his conversation with Filardi makes no mention of the attributed threat. His testimonial demeanor was not that of an honest and candid witness, and I credit the version of Filardi over that of Caprai. Michael Kelly expressed his reluctance to sign a card to his foreman, Bill Crawford, and to Elgin. According to Kelly, who testified in an honest and straightforward manner, after informing his foreman that he refused to sign, Crawford, on two or three occasions, said that "he didn't want to fire me, that he wished that I would sign the card so he didn't have to . . ." Said testimony was uncontroverted. As to Skip Elgin, after asking and learning that Kelly would not execute a card, the steward asked if Kelly realized that he would be fired if he did not do so and said he would be the one to have Kelly terminated. On another occasion, after Elgin again asked why Kelly refused to sign and after the employee explained his reasons, the former warned that he would have to do what he thought necessary. Elgin essentially denied the foregoing comments; as between Kelly and Elgin, I credit Kelly.

Traveler Donald Dittman also testified to the utilization of similar tactics designed to coerce him into executing a "voluntary ROF" card. Dittman, who generally testified in an honest and credible manner, stated that, on May 20, his foreman Steve Spencer and General Foreman Neil Knight came to his work area. One of them gave Dittman a 3 x 5 card and said, "[W]e don't want to get rid of you . . . but there comes a time when you realize the situation where the local men have to have jobs." After Dittman said that he did not desire to sign, Knight said it was in the traveler's best interests to sign and "either I sign that card for voluntary ROF or I would be dismissed from that job and unable to collect unemployment." Knight admitted being present when some 3 x 5 cards were distributed and having spoken to Dittman regarding the latter's reluctance to sign; however, he specifically denied threatening to fire Dittman if the latter refused to sign. Foreman Spencer stated that he distributed the cards to his crewmembers, that Knight was not present, and that he never threatened to fire Dittman. Neil Knight was directly contradicted by several travelers regarding the work left for his electrician crews in June and the necessity for a layoff at that time and by Ralph Koontz regarding the former's role in the selection of workers for the June layoffs. Additionally,

⁷² Filardi did testify that Elgin once told him "just to do whatever you want to do"; however, such a neutral statement does not detract from the earlier attributed comments, which I have credited.

his testimonial demeanor was that of a witness fabricating his testimony. As between Dittman and him, I credit Dittman. Steve Spencer did not appear to be an untrustworthy witness; however, I was more impressed with Dittman's forthright recitation of the circumstances surrounding the 3 x 5 card solicitation and, therefore, credit the traveler's version.⁷³ Traveler Ruben Nostebon testified that General Foreman Bob Brown gave him a 3 x 5 card and, while explaining what to do, said that "the ones that didn't fill them out probably be the first ones to go." Foreman Vern Turney testified that he was the individual who gave a 3 x 5 card to Nostebon and that Brown was not present. Brown testified, limiting such to denials that he gave a card to Nostebon. Noting some inconsistencies in Nostebon's testimony, I was, nevertheless, impressed by his sincerity and general demeanor. While neither Turney nor Brown was an unimpressive witness, I credit as more convincing the version of the distribution of his card given by Nostebon. Finally, a traveler who testified on behalf of the Respondents, Gary Truger, stated that Skip Elgin was the individual who informed him of the availability of the 3 x 5 cards, saying such were available for signing if we desired a reduction in force and "I was reminded . . . of the tradition . . . where when the work starts to slow down and there's local men on the books . . . that the travelers will request an R.O.F." His testimony was uncontroverted.

Besides utilizing coercive warnings and threats to accomplish their aims, the Respondents offered a significant inducement to balking travelers, thereby overcoming the main objection to executing the "voluntary ROF" cards. When he decided on this method of implementing the replacement of Respondent Employer's traveler electricians, Koontz, by his own testimony, was well aware, based on what transpired in 1980 when travelers who quit were denied unemployment compensation for that reason, that the present travelers would undoubtedly refuse to execute any document by which they believed they, in effect, quit their jobs. Therefore, overcoming this barrier must have been a source of concern to Koontz for Respondent Employer and Caprai and Elgin for Respondent Union, and the record contains ample evidence of the tactic utilized to overcome it. Thus, I believe that the practice of informing the balking travelers—such was apparently the concern of almost all including those travelers who voluntarily executed cards—that the executed 3 x 5 cards would remain in Respondent Employer's files and not be turned over to the State was this tactic, an outright inducement intended to allay

⁷³ Dittman also testified to a conversation between Skip Elgin, traveler Joe Sanderson, and himself during which Elgin allegedly referred to the "voluntary ROF" cards and said it would be in the employees' best interests to sign "because you will be gone from this job one way or another . . ." Elgin could not recall the conversation and Sanderson, who was an impressive witness and testified after disclaiming any interest in receiving backpay in these matters, agreed that such a conversation occurred but specifically denied Elgin's attributed comment. As between Dittman and Sanderson, I credit the denial of the latter. Inasmuch as there is nothing particularly unusual in believing portions but not all of a witness' testimony, such does not detract from my aforementioned credibility resolutions regarding Dittman and his supervisors.

the legitimate fears of the travelers and persuade them that no adverse consequences would result from signing a card. The effect was predictable. Several witnesses, in particular Foremen Jack Davis and Steve Spencer, testified that what Koontz well understood was, in fact, the common reason given by the travelers for hesitating to sign the "voluntary ROF" cards and that responded to such concerns with assurances that the cards were merely for the company's files and that the information thereon would never be transmitted to the State. In addition travelers Sanderson and Nostebon, both of whom I have credited, testified that Skip Elgin told each one the same thing—that the cards were for the company files and their unemployment compensation would not be affected. With their concern alleviated by this significant Respondent Employer benefit (the covering up of the travelers' "voluntary" consent to being laid off), balking travelers executed the 3 x 5 cards—thereby becoming enmeshed in what appears to have been a fraudulent withholding of relevant information from the State of Washington's employment security department. Although no dollar value could be placed on this benefit, that Respondent Employer's and Respondent Union's assurances represented something of value to travelers cannot be doubted.

In short, motivated by their lack of membership in Respondent Union, Koontz sought to "maneuver" the contemplated changeover by the distribution of the 3 x 5 cards to the traveler electricians. However, Respondent Employer managed to obtain executed 3 x 5 "voluntary ROF" cards—either by coercion, inducement, or by the genuine desire of a traveler to leave the jobsite, the fact remains that by early June Koontz had in his possession executed 3 x 5 cards from 23 traveler electricians (Shiftlet, Woytowich, Wray, Truger, Johnson, Nostebon, Mann, Parks, Oestreich, Smith, Sanderson, Dittman, Freed, Gilles, Ericson, Mercure, Davis, Mullenax, Smith, Drappo, Filardi, Albert, and Serra). On June 4 and 11, each of them was laid off and, within days, replaced by an electrician/member of Respondent Union. Based on my analysis of his credibility, I do not credit Koontz that said layoffs represented merely the granting of the desires of travelers to leave the job. Rather, it follows logically and consistently from the distribution of the "voluntary ROF" cards and the conduct of representatives of both Respondents in that regard⁷⁴ that said reduction in force was the culmination of the understanding, reached on May 3 by Caprai and Koontz, and was unlawfully motivated by the travelers' nonmembership in Respondent Union. In this regard, Koontz admitted that the lay-

offs were not economically motivated. Counsel for Respondent Employer argue that no such unlawful motivation may be found herein inasmuch as the 3 x 5 cards were distributed to *all* employees and as not all travelers were subject to the June 4 and 11 ROF's. I do not agree. Thus, one may logically interpret the distribution of 3 x 5 cards to members of Respondent Union as an effort to mask the unlawful motivation for such; it could be expected, of course, that no locals would execute a card.⁷⁵ Also, those travelers who were not laid off in June were classified as JWW's performing a service for Respondent Employer described by Donald Day as "drastically" necessary. Therefore, it was in Respondent Employer's own self-interests to retain the JWW's on the job.

Counsel for Respondent Employer next point out that there is much uncontroverted testimony from foremen, general foremen, Skip Elgin, Larry Caprai, and four alleged discriminatees that prior to the distribution of the "voluntary ROF" cards, travelers had already requested to be included in a future ROF, based on the travelers' tradition, and that travelers executed the cards freely and voluntarily, absent any sort of coercion or inducement. By the foregoing it is apparently contended that the card signers must be found to have, in effect, quit their jobs or that the travelers' willingness to sign the cards somehow negates the unlawful considerations underlying the June layoffs. I do not agree. Initially, quitting denotes some sort of immediate action affecting an individual's employment tenure, undertaken by *that* individual. Herein, by the express terms of the 3 x 5 cards, the signing travelers were acquiescing to some future action, affecting their employment tenure, to be undertaken by Respondent Employer at the whim of the latter. Thus, the cards did no more than put in writing the verbal expressions of travelers earlier in May, and if Koontz, for any reason, chose to disregard the "voluntary ROF" cards and his commitment to Larry Caprai, the employment tenure of the travelers would not have been, at all, affected by the signing of the cards. Therefore, in no sense can it be said that any traveler "quit" by executing a 3 x 5 card—notwithstanding what they may have individually believed were the consequences of such an act. Rather, each traveler was laid off, and I have previously concluded that Respondent Employer was unlawfully motivated in so doing. Next, if whether card signers were coerced or induced into their actions is a relevant consideration herein, the credited evidence and the record as a whole, establishes that nothing less than an atmosphere of coercion and inducement pervaded the distribution and collection of cards by Respondent Employer's foremen and general foremen and that the conduct, underlying this surrounding circumstance, is directly attributable to representatives of both Respondents. It strains credulity to believe that any card signer could have been unaware and, therefore, uninfluenced by such. In this regard, James Mercure, who executed a 3 x 5 card given to him by his foreman, Bill Crawford, credibly testified that he signed not because he desired an

⁷⁴ Contrary to the General Counsel, none of the coercive conduct can be found to be violation of Sec. 8(a)(1) of the Act. Thus, inasmuch as the charge in Case 19-CA-15220 was filed on December 2, 1982, the events of only the preceding 6 months may be considered as establishing unfair labor practices. Herein, whatever coercive tactics were utilized by Respondent Employer's general foremen and foremen, to which the company was bound, were engaged in during the month of May—beyond the statutory 10(b) period. Accordingly, no 8(a)(1) conduct can be established on this record. However, "earlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Section 10(b) ordinarily does not bar [such evidence]" *NLRB v. Longshoremen Local 13*, 549 F.2d 1346 (9th Cir. 1977).

⁷⁵ One local member, Dan Gary, did sign a card; however, he was a foreman at the time and "wanted off" to go "gold panning" with his family. I attach no significance to this.

ROF but as a result of "rumors" that he would be fired anyway. As such threats, I have found, were uttered by general foremen, foremen, and Skip Elgin at different times and to different travelers and as both Respondent Employer and Respondent Union exercised significant control⁷⁶ over the livelihoods of the respective travelers, Respondent Employer and Respondent Union must share equal responsibility for such rumors, rendering the voluntariness of any signing unlikely. *Sachs Electric Co.*, supra.⁷⁷ Finally, assuming arguendo that an individual traveler may have been uninfluenced by the Respondents' tactics and voluntarily executed a 3 x 5 card as a courtesy to his unemployed local brethren, I would still find that such does not negate the unlawful nature of his layoff. Thus, I have found that, as a result of his early May meeting with Caprai, Koontz consented to replacing Respondent Employer's traveler electricians with members of Respondent Union and that the distribution of the 3 x 5 cards, which was in furtherance of Koontz' agreement (the means to reach his goal), was based on the travelers' nonmembership in Respondent Union. Inasmuch as their eventual layoffs were thereby based on unlawful considerations (nonmembership in a labor organization), it follows logically that travelers who executed "voluntary ROF" cards were, in effect, assenting to the commission of an act violative of Section 8(a)(1) and (3) of the Act. Even if voluntary, the execution of a 3 x 5 card by a traveler no more insulated Respondent Employer from liability for violating Section 8(a)(1) and (3) of the Act than would a document, which an employee signs and by which he obligates himself to refrain from union membership, be enforceable by an employer against the signer. Such a "yellow-dog contract" is, of course, violative of Section 8(a)(1) and (3) of the Act. Just as such a document would not immunize an employer from liability for firing an employee who joins a union, the signing of the "voluntary ROF" cards should not, and cannot, be interpreted so as to force the signers to acquiesce to an unlawful act, especially in circumstances where they could not know the underlying unlawful considerations. In short, the travelers' asserted volunteerism may not be utilized as a defense by Respondent Employer.⁷⁸ Accordingly, I find that the June

4 and June 11 layoffs of travelers, who executed 3 x 5 cards, by Respondent Employer was violative of Section 8(a)(1) and (3) of the Act.

Of course, not only travelers who executed cards were laid off; 14 travelers who worked on the swing shift were laid off on June 28. The only testimony regarding the reason for said layoffs was from Respondent Employer's General Foreman Donald Day; therefore, resolution of his credibility is mandatory. Briefly stated, the witness asserted that no less than 13 of the travelers approached him prior to the layoffs, each requesting to be included in any future ROF because of the area unemployment situation; that utilizing the 3 x 5 cards in these circumstances was unnecessary; that the work of the swing shift was coming to an end in late June; that layoffs were necessary; and that the primary factor in his—and Day insisted that he chose whom to lay off—decision to lay off the travelers was their personal preference for such. Bearing in mind that the General Counsel offered no rebuttal to his testimony, I, nevertheless, place no reliance on Day's testimony, believing that the swing-shift layoffs, as those of the 3 x 5 card signers, were motivated by the nonmembership of said individuals in Respondent Union. Initially, I was not impressed by Day's testimonial demeanor, believing his responses exhibited less candor than that of other witnesses. This view is buttressed by the following. Unlike for the card signers, Respondent Employer asserted an economic reason for the 14 swing-shift layoffs. However, notwithstanding the obvious significance of Day's testimony, Respondent Employer offered absolutely no corroborative evidence, not even as to the halting of swing-shift operations and its work ending. Such left a large question in my mind inasmuch as no economic justification was offered for any of the other layoffs during June. In this regard, I note that corroboration for his testimony was possible. Thus, Day allegedly was given a quota of workers to lay off; presumably, someone established that quota and was also aware of the need for a reduction in force.⁷⁹ Next, questioned closely as to why the swing-shift travelers were not transferred to the day shift, Day asserted that layoffs were necessary as there were ongoing layoffs on the day shift and there would have been no room for such a large number of transferees. On this point, he was directly contradicted by Ralph Koontz and the record as a whole. Thus, Koontz specifically denied that any of the June 4 and 11 layoffs were caused by a lack of work and stated that work was increasing during June. Moreover, other than the June 4 and 11 layoffs of travelers, there is no record evidence of any layoffs in June prior to June 28. Further, on the next day Respondent Employer requested electricians from the hiring hall and, during the month of July, a total of 15 electricians were referred to the jobsite. Accordingly, Day's assertion that the travelers could not have been transferred to the day shift appears to have been rather disingenuous. Further, while Day was assiduous in denying the electricians'

⁷⁶ Respondent Employer was, of course, the Employer of the travelers and Respondent Union controlled the ability of each to work within its territorial jurisdiction by operation of the exclusive hiring hall.

⁷⁷ I am fully cognizant of the fact that *Sachs* involves only conduct of a union and that the Board attributed nothing unlawful or otherwise to the employer. However, I, nevertheless, believe that the same rationale is applicable to such a coercive atmosphere which, in part, is attributable to the employees' employer who, in the first instance, controls their livelihoods.

⁷⁸ Accordingly, I find irrelevant the fact that employees Paul Freed, James Parks, Joseph Sanderson, and Gary Truger may have executed 3 x 5 cards because each desired to leave the job as a courtesy to unemployed local members. While I found their respective testimony credible, such does not vitiate the fact that each was subsequently laid off for unlawful considerations—his nonmembership in Respondent Union.

Based on the same considerations, I reaffirm my rulings at the hearing regarding the nonadmissibility of affidavits of 21 alleged discriminatees (R. U. Exhs. 7(a) through 7(u)). Further, even if such were admitted, I would give the affidavits no weight.

⁷⁹ Given Ralph Koontz' control of Respondent Employer's work at WPPSS #2, he surely would have been in a position to know the work outlook for the swing shift in June. Yet, he did not testify as to it, and his construction diary is silent on this point.

status as travelers was a motivating factor in his layoff decisions, Koontz emphasized in his construction diary that those laid off on June 28 were travelers. Clearly, he would not have bothered to identify those workers as such if that classification did not hold some significance for him. Given my belief that Respondent Employer previously had committed itself to replacing its travelers, at the behest of Respondent Union, with members of the latter, the foregoing factors, when considered along with my reservations as to his demeanor, convince me that Donald Day was being less than candid during his testimony and that the swing-shift travelers were laid off on June 28 simply because they were travelers. Finally, assuming arguendo that each of the laid-off travelers had requested to be included in a future ROF, and I am not certain that such, in fact, occurred, that is not an important consideration as to legality of the layoffs inasmuch as, unlike for those laid off on June 4 and 11, the "requests" were not the alleged bases given for the layoffs. Rather, Day, on behalf of Respondent Employer, asserted an uncorroborated economic justification for the entire layoff, which defense, despite being uncontroverted by the General Counsel, does not, I find, retain viability under close scrutiny. Based on the above, I conclude that the following swing-shift employees were laid off in violation of Section 8(a)(1) and (3) of the Act: Pil Yun Chong, Delbert Jennings, Kenneth Yost, Harold Albert, Jimmie T. Andrews, George T. Anderson, Richard Adler, Thomas Bauman, R. Payone, John Haid, Wayne Crosby, Barry Engleman, Howard Shinn, Gerald P. Stover, and Thomas J. Hanley.

Regarding the June 2 terminations of travelers Jack Marsh and Michael Kelly, there is no dispute that each refused to execute a 3 x 5 "voluntary ROF" card and that said refusals were for the identical reason—neither wished to be involved in what they considered to be a "fraud" against the State of Washington unemployment insurance system. I have previously credited testimony, describing threats and warnings by Respondent Employer's foremen and general foremen that those who refused to sign a 3 x 5 card faced termination; in particular, I credited the testimony of Kelly that his foreman Bill Crawford warned him on two or three occasions that "he didn't want to fire me, that he wished that I would sign the card so he didn't have to" Said warnings, of course, are given greater emphasis when considered against the background of Respondent Employer's assent to replace its traveler electricians with members of Respondent Union. As to Marsh, Respondent Employer asserts that Marsh stated to his foreman VerSteg that if fired for a trivial reason he could still arrange to receive unemployment compensation; that Marsh continually wandered about the jobsite speaking to his friends instead of working and was slow to respond to VerSteg's orders to do work; and that VerSteg finally tired of Marsh's attitude and fired him. Testifying on behalf of Respondent Employer, VerSteg described Marsh's poor work habits during the period just prior to his termination and did so in, what appeared to me as, an honest, forthright, and entirely credible manner. While Marsh

also testified in a mostly credible manner,⁸⁰ he did not testify on rebuttal requiring VerSteg's description of his deteriorating work habits. Accordingly, VerSteg's otherwise credible testimony, as to that crucial area, was uncontroverted. In particular, I was impressed with VerSteg's account of the events of the morning of June 2 and how he came to write on Marsh's termination notice as the reason for such: "Disruptive Attitude." Accordingly, notwithstanding the existence of a desire by Respondent Employer to rid itself of traveler electricians, the General Counsel has not, in my opinion, established by a preponderance of the evidence that Respondent Employer terminated Jack Marsh for unlawful reasons, violative of Section 8(a)(1) and (3) of the Act. Concerning Mike Kelly, an overriding consideration for me in deciding on the legality of his discharge was the lack of any evidence, other than what was written on his termination notice, regarding the reasons for his discharge. I note that Cal Morford testified to a conversation with the alleged discriminatee during which the latter, in effect, said that he desired to be fired and would give the company cause to do so and that such was uncontroverted by Kelly, who had an opportunity to do so on rebuttal. However, Morford also testified that Bill Crawford made the decision to discharge Kelly, and he did not testify. Accordingly, Respondent Employer failed to establish that Kelly's above comment in any way precipitated his discharge or, indeed, that rules infractions were committed by Kelly on the morning of June 2. In this regard, Kelly, who, I previously concluded, was an honest witness, credibly testified that the given discharge reason ("Quit Work for Lunch Early") had no factual basis and constituted, in effect, nothing more than a sham. Based on the foregoing, given the tenor of the comments attributed to Crawford, I find that Michael Kelly was terminated by Respondent Employer because he refused to sign a "voluntary ROF" card—in violation of Section 8(a)(1) and (3) of the Act—and that such resulted from Respondent Employer's commitment to replace its traveler electricians.

Based on the foregoing, I have concluded that Respondent Employer laid off or terminated the following traveler electricians, based on their respective nonmembership in Respondent Union, in violation of Section 8(a)(1) and (3) of the Act: Filardi, Serra, Dittman, Nostebon, Davis, Freed, Parks, Sanderson, Truger, Oestreich, Ericson, Mann, Mercure, L. Smith, James Mullenax, J. Smith, Drappo, Crabtree, Johnson, Gilles, Shiftlet, Woytowich, Pil Yun Chong, Jennings, Yost, Albert, Andrews, Anderson, Adler, Bauman, Payone, Haid, Crosby, Engleman, Shinn, Stover, Hanley, and Kelly. Inasmuch as I believe Respondent Employer reached some sort of an agreement or understanding with Respondent Union to accomplish these personnel actions and as I believe said understanding was reached at the behest of the latter, I also conclude that Respondent Union "caused"

⁸⁰ Where they conflict, I credit the testimony of VerSteg over that of Marsh as being of greater reliability. In particular, I thought Marsh not entirely candid in denying the existence of any IBEW traveler tradition of "moving on" when work was slack and when local members were unemployed.

said layoffs and termination. Accordingly, Respondent Union engaged in conduct violative of Section 8(b)(2) and (1)(A) of the Act and is likewise liable for such unlawful acts. *Food & Commercial Workers Local 454 (Central Soya of Athens)*, 245 NLRB 1295 (1979); *Groves Granite*, supra. Finally, the credited evidence herein establishes that, commencing with the distribution of the "voluntary ROF" cards by Respondent Employer's foremen and general foremen, steward Skip Elgin, and Assistant Business Manager Larry Caprai engaged in coercion and inducement to convince reluctant and balking travelers to execute the cards. Thus, Elgin and Caprai warned of termination if travelers did not sign; Elgin, after mentioning the availability of cards, admonished that travelers should request ROF's when jobs are scarce and unemployed local members are registered on the out-of-work list; and Elgin sought to induce the execution of cards by informing travelers that the cards would remain in Respondent Employer's possession and receipt of unemployment compensation would not be affected. These statements were never retracted, and said conduct, thereby, was not vitiated. Given Respondent Union's control over the livelihood of travelers, as discussed earlier, I find said comments violative of Section 8(b)(1)(A) of the Act. *Sachs Electric Co.*, supra.

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing to refer Michael S. June, Robert Albert Knapp, Thomas E. McKenzie, and Jimmy M. Scott for employment with employer/members of NECA through its exclusive hiring system because said individuals were not members, Respondent Union engaged in conduct violative of Section 8(b)(2) and (1)(A) of the Act.
4. By causing Respondent Employer to lay off travelers Freed, Parks, Sanderson, Truger, Filardi, Serra, Dittman, Nostebon, Davis, Oestreich, Ericson, Wray, Mann, L. Smith, Mullenax, Mercure, J. Smith, Drappo, Crabtree, Johnson, Gilles, Shiftlet, Pil Yun Chong, Woytowich, Jennings, Yost, Albert, Andrews, Anderson, Adler, Bauman, Payone, Haid, Crosby, Engleman, Shinn, Stover, and Hanley and discharge traveler Kelly in violation of Section 8(a)(1) and (3) of the Act, Respondent Union engaged in conduct violative of Section 8(b)(2) and (1)(A) of the Act.
5. By denying referral registrants the opportunity to review and inspect its hiring hall records, Respondent Union engaged in conduct violative of Section 8(b)(1)(A) of the Act.
6. By its efforts to cause travelers to agree to accept a reduction of force in order to provide jobs for its members, Respondent Union engaged in conduct violative of Section 8(b)(1)(A) of the Act.
7. By stating to travelers, who are applicants for dispatch or who are working, that they should refuse jobs or accept ROF's in order to make room for unemployed members and by warning travelers that they would be fired if they did not accept an ROF, Respondent Union

engaged in conduct violative of Section 8(b)(1)(A) of the Act.

8. By laying off employees Freed, Parks, Sanderson, Truger, Filardi, Serra, Dittman, Nostebon, Woytowich, Davis, Oestreich, Ericson, Wray, Mann, L. Smith, Mullenax, Mercure, J. Smith, Drappo, Crabtree, Johnson, Gilles, Shiftlet, Pil Yun Chong, Jennings, Yost, Albert, Anderson, Andrews, Adler, Bauman, Payone, Haid, Crosby, Engleman, Shinn, Stover, Hanley, and by discharging employee Kelly because they were not members of Respondent Union, Respondent Employer engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

9. Unless stated, there were no other unfair labor practices.

REMEDY

Having found that both Respondent Union and Respondent Employer have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes and policies of the Act. I have found that Respondent Union unlawfully failed and refused to dispatch Michael June during the time period April 21 until May 17 and Jimmy Scott during the time period May 7 until October 1. Accordingly, I shall recommend that Respondent Union make each applicant whole for any loss of earnings⁸¹ he may have suffered as a result of its failure to utilize normal hiring hall procedures and dispatch said applicants when jobs became available for each. Other nonwage benefits and entitlements will also be restored to each in accordance with the above. Backpay shall be computed in accordance with Board policy as described in *F.W. Woolworth Co.*, 90 NLRB 289, with interest as prescribed in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1978). Although I have also found that Robert Knapp and Thomas McKenzie also were respectively unlawfully denied dispatch, I shall recommend that no backpay be required for either as such would be contrary to the purposes and policies of the Act.⁸² As to the four named applicants, I shall recommend that Respondent Union notify each that the hiring hall procedures will be available for use by him on an equal basis with members.

⁸¹ The measure of earnings shall be the wage or salary of the position to which each would have been dispatched or employed, including supervisory positions. *Plumbers Local 725 (Powers Regulator Co.)*, 225 NLRB 138 (1976).

⁸² I have previously concluded that neither McKenzie nor Knapp possessed a State of Washington certificate of competency or a temporary permit to perform electrical work during the period during which Respondent Union unlawfully failed and refused to dispatch him. Further, I have found that the state electrical installations law makes it unlawful for any person, firm, or corporation to employ an individual who does not have either of the aforementioned documents. Accordingly, had either McKenzie or Knapp been lawfully dispatched to a NECA employer-member, said employer could not have lawfully employed either. In these circumstances, it would not further the purposes and policies of the Act to award backpay for presumed employment when such would have been unlawful. Also, I will not presume that any NECA member would have willfully violated the law and employed either worker.

I have found that Respondent Union unlawfully caused Respondent Employer to, in turn, unlawfully lay off traveler electricians Freed, Parks, Sanderson, Truger, Filardi, Serra, Woytowich, Dittman, Nostebon, Davis, Oestreich, Ericson, Wray, Mann, L. Smith, Mullenax, Mercure, J. Smith, Drappo, Crabtree, Johnson, Gilles, Shiftlet, Pil Yun Chong, Jennings, Yost, Albert, Anderson, Andrews, Adler, Bauman, Payone, Haid, Crosby, Engleman, Shinn, Stover, and Hanley and terminate traveler electrician Kelly. Accordingly, I shall recommend that Respondent Union be ordered to notify Respondent Employer, in writing, that it has no objection to the reemployment of each of the above employees⁸³ and that Respondent Employer be ordered to offer to each traveler immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. I shall also recommend that Respondent Union and Respondent Employer be required, jointly and severally, to make each of the travelers whole for any loss of earnings he may have suffered from the date of his layoff or termination in June, caused by the misconduct of the Respondents. Said back-pay amounts are to be computed in the manner set forth in *F. W. Woolworth Co.*, supra, 90 NLRB 289, and with interest as set forth in *Isis Plumbing Co.*, supra, 138 NLRB 716, and *Florida Steel Corp.*, 231 NLRB 651.

On the basis of these findings of fact and conclusions of law and the entire record, I issue the following recommended⁸⁴

ORDER

A. Respondent International Brotherhood of Electrical Workers, Local Union 112, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to refer applicants who are not members of Respondent Union for employment with employer-members of NECA.

(b) Causing Respondent Employer to discharge or otherwise discriminate against employees in any way because they are not members of Respondent Union.

(c) Denying referral applicants the opportunity to review and inspect hiring hall dispatch records.

(d) Engaging in efforts to cause nonmember employees of Respondent Employer or nonmember hiring hall applicants to accept reductions in force or to forgo dispatch opportunities in order to provide jobs for members of Respondent Union.

(e) Reminding individuals who are not members of Respondent Union that it is the IBEW tradition that they should forgo work opportunities or leave present jobs in order to provide work for members of Respondent Union who are unemployed.

⁸³ Respondent Union's liability for backpay shall terminate 5 days after such notification.

⁸⁴ If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Threatening to retaliate or, in any other manner, punish individuals who are not members of Respondent Union if they do not forgo dispatch opportunities or leave present jobs in order to provide work for members of Respondent Union who are unemployed.

(g) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer and in the manner set forth in the remedy section herein make Arthur Filardi, Ruben Nostebon, Charles Serra, Donald Dittman, James Davis, John Oestreich, Dean Ericson, Joseph Wray, Robert Mann, Pil Yun Chong, Delbert Jennings, Kenneth Yost, Jimmie Andrews, George Anderson, Harold Albert, Richard Adler, James Mercure, Gary Truger, Paul Freed, James Parks, Joseph Sanderson, Paul Woytowich, G. W. Drappo, Earl Shiftlet, Herbert Johnson, Charles Gilles, Lawrence Smith, James Smith, James Mullenax, Bill Crabtree, Thomas Bauman, R. Payone, John Haid, Wayne Crosby, Barry Engleman, Howard Shinn, Gerald P. Stover, Thomas J. Hanley, and Michael Kelly whole for any loss of pay any of them may have suffered by reason of the discrimination against them.

(b) In the manner set forth in the remedy section herein make Michael June and Jimmy Scott whole for any loss of pay either may have suffered by reason of our failure to dispatch him to available jobs.

(c) Notify Respondent Employer, in writing, that it has no objection to the reemployment of the individuals described in paragraph A, 2.(a), of this Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all dispatch and other hiring hall records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(e) Notify, in writing, Michael June, Jimmy Scott, Robert Knapp, and Thomas McKenzie with regard to the steps it has taken to ensure that hiring hall procedures will be available for use by them on an equal basis with members of Respondent Union.

(f) Post at its business offices and hiring hall copies of the attached notice marked "Appendix A."⁸⁵ Copies of said notice on forms provided by the Regional Director for Region 19, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Sign and mail to the Regional Director for Region 19 sufficient copies of said notice, on forms provided by

⁸⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

him, for posting at the WPPSS #2 jobsite of Respondent Employer, if the latter is willing.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

B. Respondent Fischbach/Lord Electric Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or laying off employees, in compliance with a demand by Respondent Union or for any other reason, on the basis of their nonmembership in Respondent Union.

(b) Encouraging membership in Respondent Union by discharging, laying off, or otherwise discriminating against employees who are not members of said labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Offer Arthur Filardi, Ruben Nostebon, Charles Serra, Donald Dittman, James Davis, John Oestreich, Dean Ericson, Joseph Wray, Robert Mann, Pil Yun Chong, Delbert Jennings, Kenneth Yost, Jimmie Andrews, George Anderson, Harold Albert, Richard Adler, Thomas Bauman, R. Payone, John Haid, Wayne Crosby, Barry Engleman, Howard Shinn, Gerald P. Stover, Thomas J. Hanley, James Mercure, Gary Truger, Paul Freed, James Parks, Joseph Sanderson, Paul Woytowich, G. W. Drappo, Earl Shiftlet, Herbert Johnson, Charles Gilles, Lawrence Smith, James Smith, James Mullenax, Bill Crabtree, and Michael Kelly immediate and full reinstatement to their former positions in the manner set forth in the remedy section herein.

(b) Jointly and severally with Respondent Union, and in the manner set forth in the remedy section herein, make the employees named in paragraph B.2.(a), of this Order whole for any loss of pay any of them may have suffered by reason of the discriminations against them.

(c) Expunge from the respective personnel files of the employees named in paragraph B.2.(a), of this Order, or any other files, any references to their respective layoffs or terminations, including the 3 x 5 "voluntary ROF" cards, and notify each, in writing, that this has been done and that evidence of his unlawful layoff or discharge will not be used as a basis for future personnel action against him.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all of the records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its office facility at WPPSS #2 or, if such job is over, mail to each discriminatee at his last known address, copies of the attached notice marked "Appendix

B."⁸⁶ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by its authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Employer has taken to comply.

IT IS FURTHER ORDERED that the remainder of the third consolidated complaint be dismissed.

⁸⁶ See fn. 85, above.

APPENDIX B

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or lay off employees in compliance with a demand or request from International Brotherhood of Electrical Workers, Local Union 112, AFL-CIO, the Union, or for any other reason, on the basis of their membership in the Union.

WE WILL NOT encourage membership in the Union by laying off or otherwise discriminating against our employees who are not members of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Arthur Filardi, Ruben Nostebon, Charles Serra, Donald Dittman, James Davis, John Oestreich, Dean Ericson, Joseph Wray, Robert Mann, Pil Yun Chong, Delbert Jennings, Kenneth Yost, Jimmie Andrews, George Anderson, Harold Albert, Richard Adler, Thomas Bauman, R. Payone, John Haid, Wayne Crosby, Barry Engleman, Howard Shinn, Gerald P. Stover, Thomas J. Hanley, James Mercure, Gary Truger, Paul Freed, James Parks, Joseph Sanderson, Paul Woytowich, G. S. Drappo, Earl Shiftlet, Herbert Johnson, Charles Gilles, Lawrence Smith, James Smith, James Mullenax, Bill Crabtree, and Michael Kelly immediate and full reinstatement to their respective former positions or, if said jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges and, jointly and severally with the Union, make each whole, with interest, for any loss of earnings he may have suffered as a result of his layoff or termination, caused by our misconduct.

WE WILL expunge from the respective personnel files of the employees named in the above paragraph, or any other files, any references to their respective layoffs or terminations, including 3 x 5 "voluntary ROF" cards, and notify each, in writing, that this has been done and

that evidence of his unlawful layoff or discharge will not be used as a basis for future personnel action against him.

FISCHBACH/LORD ELECTRIC COMPANY